United States Court of Appeals

for the Second Circuit

APPENDIX

75-7548

B

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

DOCKET NO. 75-7548

INTERNATIONAL CONTROLS CORP.,
Plaintiff-Appellee,

vs.

ROBERT L. VESCO, et al.,
Defendants,

and

VESCO & CO., INC.,
Defendant-Appellant.

CIVIL ACTION—ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK
SAT BELOW: HON. CHARLES E. STEWART, JR., U.S.D.J.

UNITED STATES COURT OF APPEALS
FILED
DEC 17 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX
Volume I

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New York, New York 10022

and

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JAMES J. SHRAGER
SUSAN I. LITTMAN
On the Brief

N. J. Appellate Printing Co., Inc., Woodbridge, N. J. (201) 636-2030

PAGINATION AS IN ORIGINAL COPY

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Docket Entries

(1a - 20a)

ITED STATES DISTRICT COURT

Jury demand date:

P1

JUDGE

Form No. 106 Rev.

ATTORNEYS

ERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

BERT L. VESCO, HARRY L. SEARS, FRANK G. ATTY, NORMAN LeBLANC, STANLEY GRAZE, LTON F. MEISSNER, ULRICH J. STRICKLER, CHARD E. CLAY, WILBERT J. SNIPES, EDERIC J. WEYMAR, GILBERT R.J. SIMONS, HENRY BUHL III, RALPH P. DODD, ALAN SENHAUER, GEORGE PHILLIPE, JOEL GRADY, IRLEY BAILEY, VESCO & CO., INC., JOS D., COLUMBUS [illegible] COMPANY, LIMITED, AMAS COMMONWEALTH BANK, INTERNATIONAL HCORP, KILMOREY INVESTMENTS LTD., [illegible] APITAL LTD., GLOBAL HOLDINGS LTD., GEO- AL FINANCIAL LTD., BUTLERS BANK, LTD. ow known as WHO HOLDINGS LTD.), ALLAN BUTLER, BANK CANTRADE LTD., FAIRFIELD VTATION CORPORATION, FAIRFIELD GENERAL [illegible] ORPORATION, SKYWAYS LEASING CORPORATION nd MARINE MIDLAND BANK-NEW YORK,

Defendants.

DAVID [illegible]
[illegible] Park Ave.
NYC, NY 10017

[illegible] CLEARY AND KRAMER
[illegible] Madison Ave., NYC, NY 10017
[illegible]

For defendant:
Dornbush, Mensch, Mandelstam & Schwar
Atty. for Deft. Wilbert J. Snipes
[illegible] E. 40th St., N.Y. 10016
[illegible]

Stanley and Fisher
[illegible] Broad St.
Newark, New Jersey (deft. Fairfield Ge
Corp. and Fairfield Leasing Corp.)

Clayton and Sherman
[illegible] Rockefeller Plaza, NCY 10020
586-4300 (deft. Shirley Bailery)

American Credit, Pl'ff
vs.
[illegible]

John K. Schimmel, Attorney for Pl'ff

DATE	NAME OR RECEIPT NO.	REC.	DISB.
4-1-	[illegible]	15	15
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]

Docket Entries

JUDGE STEWART

	PROCEEDINGS	Date Order Judgment No
73	Filed Complaint & Issued Summons	
73	Filed Pltff's Order to Show Cause and Temporary Restraining Order before Judge Stewart, Room 2602, 6/13/73, 2:00 P.M., restraining, pendente lite, defts Fairfield Aviation Corp and Skyways Leasing Corp, directors, etc. from prosecuting or taking any steps in furtherance of (1) action entitled "Fairfield Gen. Corporation, etc. vs Ind. Stewart, J.; Affdvt of David M. Butowsky in support of application to enjoin and restrain prosecution of New Jersey Actions.; affdvt of Malcolm McAlpin; Affdvt of Allen Shinn. Exhibits to Affdvt of Allen Shinn.	
.73	Filed Pltff's Affdvt of Personal Service by Don Shehigian; Affdvt of Personal service by James P. Pettit; Affdvt of Substituted Service by James P. Pettit upon Alwyn Eisenhauer; affdvt of personal service by Joseph A. Bondi upon Fairfield Aviation Corp, Fairfield Gen. Corp and Skyways Leasing Corp, etc.	
.73	Filed Stip. & Order extending defts time to answer S&C from 6/13/73 to 6/27/73. Cactac, J.	
.73	Filed Pltff's ORDER. Julian Maynard of any member, etc over age of 21 and not a party to action are auth. to effect service of process in action upon defts: Vesco, Beatty, LeBlanc, Stanley Craze, Maissner, Strickler, Weymar, Eisenhauer, Clay, Phillips, Grady, I.O.S. Ltd. Bahamas Commonwealth Bank, Intal Bancorp, Kilmorey Investments Ltd., Value Capital Ltd, Global Holding Ltd. Global Financial Ltd and Allan J. Butler, dated 6/15/73 Clk. Affdvt of C. Leonard Gordon	
.73	Filed Affdvt of David M. Butowsky and Order extending Temporary Restraining Order returnable 6/20/73 from 6/18/73. Stewart, J.	
-73	Filed deft Alwyn Eisenhauer's notice of motion re: dismissal ret: 6-27-73.	
-73	Filed brief of Alwyn Eisenhauer in support of motion to dismiss.	
-73	Filed deft Vesco's notice of motion re: dismissal ret: 6-18-73.	
-73	Filed brief in support of motion to dismiss by deft Vesco.	
-73	Filed MEMO-END. on motion dtd this date. After hearing the parties and reviewing their papers, this court denies the motion herein. See the decision of the Court in transcript of hearing on 6-18-73. The motion is denied without prejudice to deft's right to renew its application up on a showing of additional relevant facts. STEWART, J. (mn)	
8-73	Filed order that James P. Pettit is appointed to serve summons and complaint on any or all defts', etc. Stewart, J.	
-73	Filed pltff's proposed findings of fact and conclusions of law in support of its motion for a preliminary injunction and in opposition to the motions of certain defts' to dismiss the complaint.	
-73	Filed order that defts' Skyways Leasing Corp., Fairfield General Corp., Fairfield Aviation Corp., Frank G. Beatty, Joel Grady and Alwyn Eisenhauer are enjoined, pendente lite, as indicated. Ordered, that deft. Vesco & Co., Inc., its directors, officers, agents, etc., are enjoined, pendente lite, as indicated. Ordered, that the motions of deft. Vesco & Co., Inc., Fairfield General Corp., Fairf Aviation Corp. and Skyways Leasing Corp., to dismiss the complaint is denied. Ordered, that the motion of deft. Alwyn Eisenhauer to quash service in the within action be, and is denied in all respect. Stewart, J. M/N	
3-73	Filed affdvt. of James P. Pettit, Re: service of summons & complaint on C. Henry Buhl III - on 7/2/73	HWS&H
10-73	Filed deft's (Vesco & Co. notice of motion to dismiss-ret. 6/27/73	
13-73	Filed stip. and order that the time of deft. Ralph P. Dodd to answer complaint is ext. to Aug. 31, 1973. So ordered, Stewart, J.	

see page -3-

Docket Entries

INT. CONTROLS CORP. VS ROBERT VESCO, ET AL — STEWART, J.
73-2518

DATE	FILINGS—PROCEEDINGS
Jul31,73-	Filed ORDER that Lois S. Yohonn is authorized to serve summons and complaint upon deft. Robert Vesco.Stewart,J.
Jul.31,73-	Filed deft. Robert Vesco & Co,Inc. notice of appeal to the Second Circuit appealing from the whole and every part of the order of J.Stewart dated and entered in this action on July 3,1973 which inter alia granted pltfs. applications for prel. injunction;also Vesco and Co., Inc. will also challenge without in any way entering any appearance whatsoever the propriety of the entry of a second order of J.Stewart on July 3,1973 in case of /2 5001 purportedly directed to deft. Vesco and Co,Inc. which was not a party to such action. Mailed notices to: Shea Gould,Climenko and Kramer 330 Madison Ave. NYC 10017 and David M. Butowsky 230 Park Ave,NYC 10017
Aug.8-73	Filed Stip & Order extending time for deft Marine Midland Bank to answer complaint to 9/6/73.STEWART,J.
Aug.3-73	Filed Pltff's Temporary Restraining Order. Ordered that deft. Robert L.Vesco,agents,successors,etc. are hereby temporarily restrained from taking any action to remove the yacht"Patricia From the territorial limits of the U.S. up to and including 8/13/73 & ordered that pltff is authorized to seek ancillary relief in Florida in support thereof & motion for a preliminary injunction shall be held on 8/13 /73,2:30 P.M.WARD,J.
Aug.7-73	Filed Pltff's Amendment to Temporary Restraining Order.Ordered that def Robert L.Vesco,agents,etc.temporarily restrained from taking a action to remove yacht"Patricia" etc.;ordered that hearing on motion for preliminary injunction shall be held on 8/9/73 , 9:30 A.M.,Courtroom 128,US Cthouse,Foley Sq.NY.WARD,J.
Aug.9-73	Filed Pltff's Amendment to Temporary Restraining Order.Ordered that def Robert L.Vesco,agents temporarily restrained from taking any actio to remove yacht"Patricia"from Merrill Stevens Dry Dock,etc.ordered that pltff is auth.to seek ancillary relief in Fla in support ther ordered that hearing on motion for preliminary injunction shall b held on 8/14/73,11:00 A.M.Room 2602,U.S.Courthouse,Foley Sq.NY
8-15-73	Filed ORDER--ORDERED that the deposition of Joe Sutton be taken on Aug. 17,1973 in Miami,Florida and ORDERED that a subpoena be directing Joe Sutton to appear for aforesiad deposition and to documents relevant to yacht Patricia.Stewart,J.

Docket Entries Stewart,J.

CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS
7-16-73	Filed consent order modifying preliminary injunction filed July 5,1973 be amended and modified as indicated, So ordered, Stewart,J.
7-16-73	Filed affdvt. of James P. Pettit that he served Frank G. Beatty with a copy of complaint, summons and order to show cause, on 6-13-73
7-19-73	Filed pltffs affdvt. of James P. Pettit that he served deft. Marine Midland Bank true copy of summons and complaint on 7-16-73 by Mr. Robert F. Harrigan.
7-19-73	Filed consent order modifying preliminary injunction. ORDERED that the preliminary injunction dated 7/3/73 and filed 7/5/73 be and the same is amended and modified to permit Alwyn Eisenhauer to perform such services for Skyways Leasing Corp etc, as indicated(see order). So ordered, Stewart, J.
7-20-73	Filed stip. and order that the time for defts. to answer complaint is ext. to Aug. 20,1973 for defts.Frank Beatty and Albert Snipes.So ordered, Stewart, J.
7-20-73	Filed stip. and order that the time for deft.Vesco & Co, Inc, to answer complaint is ext. to Aug. 20,1973. So ordered, Stewart, J.
7-26-73	Filed transcript of record of proceedings dtd. 6-18-73
7-26-73	Filed transcript of record of proceedings dtd. 7-9-73
7-26-73	Filed transcript of record of proceedings dtd. 6-27-73
7-26-73	Filed by defts' Fairfield General Corp., Faifield Aviation Corp. and Skyways Leasing Corp. in support of motion to dismiss: 1) affdvt. of Joel M. Grady 2) Brief in support of motion to dismiss 3) supplemental brief in support of motion to dismiss.
7-26-73	Filed by deft. Vesco & Co., Inc. memorandum in support of motions to dismiss.
7-26-73	Filed by pltff memorandum in support of motions by pltff and in opposition to motions of certain of the defendants.
7-24-73	Filed notice of appeal to the USCA for the 2nd Circuit from order granting injunction pendente lite vs. Inter alia, entered 7-3-73 as modified 7-11-73 - appeal filed by defts Fairfield General Corp., Fairfield aviation Corp. and Skyways Leasing Corp. - fee paid - m/n
7-31-73	Filed order appointing Lois S. Yohonn to serve process on deft. Robert L. Vesco by depositing a copy of summons and complaint herein upon the last known residence in Nassau, Bahamas. -- Stewart, J. (m/n)

(over)

Docket Entries

RNATIONAL CONTROLS CORP. VS ROBERT VESCO ET AL
STEWART, J. Page-5-

DATE	PROCEEDINGS
8-14-73	Filed amendment to temporary restraining order--ORDERED that such TRO be further amended and the same is amended to read: ORDERED that the yacht Patricia may be moved from Merrill Stevens Dry Dock to Aubury and Co.;ORDERED that defts. Vesco,etc. are temporarily restrained from taking any action to remove yacht Patricia from Aubury and Co. Marina up to Aug. 22,1973 and that thepltf. is authorized to seek ancillary relief in Florida and that hearing on on Motion for a prel. inj. shall be held on Aug. 22,1973 In Rm.128.Stewart, J. n/m
8-20-73	Filed stip. and order that the time of defts. Frank Beatty and Wilbert Snipes to answer complaint is ext. to Sept. 28,1973. So ordered, Wyatt, J.
8-20-73	Filed deposition of Joseph Sutton taken on Aug. 17,1973.
8-6-73	Filed affdt. of Lois Yohonn(for pltf.)
8-16-73	Filed affdt. of Arthur Christy re: motion dated Aug. 3,1973 made by pltf. for a temporary restraining order and an injunction restraining Vesco from taking any action to remove yacht :Patricia.etc.
8-8-73	Filed pltfs. notice that an amendement to TRO was filed on Aug. 7,1973 in this court.
8-16-73	Filed transcript of hearing dated June 27,1973.
8-16-73	Filed transcript of hearing dated June 18,1973.
8-16-73	Filed transcript of hearing dated July 9,1973.
Aug.20/73	Filed Affidavit in opposition to Affidavit filed Aug. 16, 1973, seeking dissolution of Temporary Restraining Order
Aug.21,73	Filed Reply Affidavit in Support of Motion for Preliminary Injunction.
Aug.21,73	Filed Order for extension of Time to Answer Complaint, Deft.Vesco, to September 30, 1973, So ordered, Wyatt, J.
8-24-73	Filed ORDER--ORDERED that deft. Robert Vesco,etc. are enjoined pendente lite,from taking any action to remove the yacht Patricia from the territorial limits of the US.Stewart, J. m/n
8-24-73	Filed amendment to TRO- ORDERED that the TRO dated Aug. 3 1973 as amended by orders dated Aug.6,8. & 14,1973 is continued as to Andean Credit SA and Andean Credit,SA,etc. are temp. restrained from taking any action to remove the yacht Patricia III from the territorial limits of the US up and to Sept. 6,19 etc.(as indicated) ORDERED that the hearing on the motion for a prel. inj. shall be held on Sept. 4,1973.Stewart, J. (see amendment)
8-29-73	Filed Plaintiff's Reply Memo Dated 6-29-73
8-28-73	Filed Letter of Shea Gould Climenko & Kramer to Judge Stewart dated June 29,73
8-28-73	Filed Letter of Hannoch, Weisman, Stern & Besser to Judge Steward dated 8-29-73
8-28-73	Filed Letter of David N. Ellenbogen to Judge Stewart dated 7-2-73
8-28-73	Filed Letter of Hannoch, Weisman, Stern & Besser to Judge Stewart dated 7-17-73
Aug 8-73	Filed notice of entry of order (temporary restraining order) filed 8-3-73
Sept. 4-73	Filed Stipulation as to record on appeal.
Aug. 31-73	Filed OSC by defts. Fairfield Com. Corp,Fairfield Aviation Corp. and Skyways Leasing Corp. why an order should not be made directing pltf. to release stock certificates,records,etc. ret. on Sept. 11,1973 with affdts. of Matt Farley and Eli Hoffman in support of above Wyatt, J.

Docket Entries

TE	PROCEEDINGS
.4-73	Filed notice that the record on appeal in this action has been certified and transmitted to the USCA on Sept. 4,1973.
4-73	Filed pltfs. amendment to TRO--Ordered that the TRO dated Aug. 3,1973 of this Court as amended by orders dated Aug. 6,1973,Aug. 8,14,and 22,1973 is contd. as to Andean Credit,SA and AndeanCredit SA are temp. restrained from taking any action to remove the yacht"Patricia"III from the territioral limits of the US up to Sept. 17,1973,etc. as indicated.So ordered,Stewar
.4-73	Filed ORDER that thedeposition of AndeanCredit,SA by Eusebio Morales be taken before a notary public to administer oaths by the laws of the US or State of Florida prior to Sept. 12,1973 ,etc. Stewart, J. m/n
.10-73	Filed true copy of TRO filed on Aug. 3, 1973 ordering that deft, Vesco is temporarily restrained from taking any action to remove the yacht Patricia from territorial limits of the US up to Aug.13, 1973,etc.Ward,J. and marshal's return as proof of service upon Capt. of the vessel Patricia by Capt. Boddy on 8-4-73.
10-73	Filed true copy of amendment to TRO filed Aug. 7, 1973,and proof of service by Marshal's return served on Merrill Stevens Yacht Basi by Vice Pres on 8-8-73
10-73	Filed true copy of OSC and TRO filed June 8,1973 with proof of service with Marshal's return. Served on: Corp. Trust Co. by J. Miller on 6-18-73 Frank Beatty by (unable to serve) Skyways Leasing Corp. by Mrs. Banna on 6-19-73 Richard Clay Shirley Bailey (unable) 6-25-73 Jack Grady(unable) Wilbert Snipers on 6-20-73 Alwyn Eisenhower(unable) Fairfield Aviation Corp by Mrs Banna on 6-19-73 Fairfield General Corp. by Mrs Banna on 6-19-73 Ralph Dodd (unable) Harry Sears(unable)
ep.10-73	Filed true copy addl. summons dated June 14,1973 and proof of service by Marshal's return.
ept.10-73	Filed true copy of amendment to TRO filed Aug. 7,1973 and proof service by Marshal's return served on the Capt. of the yac Patricia by Mrs. Boddy(capts.wife) on 8-8-73
t.7-73	Filed pltfs. amended complaint.
t 11-73	Filed stip. and order that the time for deft, Marine Midland Bank to answer complaint is ext. to Oct 5,1973.So ordered, Stewart,
t.17-73	Filed ORDER-ORDERED that the deposition upon oral exam. ofRoland Boddy Capt. of the yacht Patricia III as a witness be taken before a notary public on Sept. 20,1973 at Miami,Florida,etc. Stewart, J.
ept.13-73	Filed pltfs. undertaking that Alwyn Eisenhauer, deft. undertakes that he will be bound by any and all provisions relating to the Boeing 7-07 aircraft contained in the order of injunction herein dated July 3, 1973 as amended and that he will be bound by any and all provisions relating to said aircraft as may be contained in any furture orders of this Court of stip,etc. as indicated.

(see page -7-)

DATE	PROCEEDINGS
Sept. 13-73	Filed stip. and order that action is dismissed as to defts. Alwyn Eisenhauer and if pltf. should allege that said de should violate the terms of the undertaking, defts. subject to the jurisdiction of this court for the purpose of deter whether he has violated the terms of the undertaking, etc. as indicated. So ordered, Stewart, J.
Sept. 13-73	Filed memo end. on pltfs. amendment to TRO dated Sept. 4, 1973-- The parties having consented that the TRO herein be ext. from Sept. 17, 1973 to and including Sept. 24, 1973, it is hereby, So ordered, Stewart, J.
Sept. 18-73	Filed memo end. on pltfs. amendment to TRO dated Sept. 4, 1973 The foregoing order is on consent of the parties ext. to and including Oct. 1, 1973. So ordered, Stewart, J.
Sep. 12, 73	Filed Pltff. Affidavit in Opposition to Motion to Release Corpor records.
Sep. 19, 73	Filed Pltff. Notice of Deposition, on 9/25/73.
Sep-20-73	Filed pltff's order to show cause why an order should not be made enjoining Andean Credit, S.A. - service by Sep-21-73 -- ret. 9-26-73 at 2 PM in RM 618 -- Stewart, J.
Sep-23-73	Filed pltff's affdvt. of Sheldon D. Camby in opposition to application of Intervenor Andean Credit, SA.
Sep. 21-73	Filed ORDER--ORDERED that pltf. deliver to offices of Stanley and Fisher, on orbefore Sept. 26, 1973 all stock certificates cancelled, outstanding and or unissued stock transfer books and ledgers and minutes of meetings of Board of Directors of Fairfield General Corp, Fairfield Aviation Corp. and Skyways Leasing Corp. now in its possession; etc. as indica Stewart, J. m//n.
Sep. 21, 73	Filed Deft. Wilbert J. Snipes ANSWER to the complaint.
Sep. 21, 73	Filed Memorandum of Law in Support of Application for Order to Show Cause.
Sep. 25-73	Filed affdt. of Frank B. Holsapple, Jr., for the attys. of Shea, Could Climenko and Kramer, for pltf. serving the proposed OSC, affdt. of Sheldon D. Camby and memorandum of law in sup of application for an OSC on Christy, Frey, and Christy, att for intervenor on Sept. 24, 1973.
Sep. 25-73	Filed deposition of Roland Lindsay Boddy taken on Sep. 21, 1973.
Sep. 26-73	Filed letter from deft. Roland Lindsay Boddy with copy of exhibit previously not attached with deposition of said deft. as abo
Sep. Oct. 1, 73	Filed for Pltff. Request for Entry of Default.
Oct. 1, 73	Filed Stipulation and order for Defts. Beatty & Snipes extending time to answ 10/12/73, Stewart, J.
Oct. 1, 73	Filed Stip. and order for Defts. Beatty and Snipes extending time to answer t 10/12/73, Stewart, J.
Oct. 4-73	Filed memo end. on pltf's. amendment to TRO dated Sept. 4, 1973-- The foregoing order on the consent of the parties is ext. to and including Oct. 5, 1973. So ordered, Stewart, J.
Sep. 28, 73	Filed Transcript and record of proceedings dtd. 8/14/73
Oct. 5, 73	Filed Order for Extension of time to answer complaint, Stewart, J.
Oct. 5, 73	Filed Order and Judgment permanently enjoining deft. Robert L. Vesco et indiv herein. Deft. Robert L. Vesco is required to ind emnify plaintiff for a liability to others by reason of the acts alleged in the complaint; furt ordered that deft. Vesco is liable to pltff. for all loss, damage cost a expense. Damage, cost and expense be determined by the Court upon a he Hearing to be set down by pltff. upon giving all deft. Vesco 10 days n registered mail. After hearing within judt. be amended as indicated, et Judgment entered, Clerk.

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PROCEEDINGS

3	Filed for Pltff. Preliminary Injunction --- Ordered, that intervenor Andean Credit, S.A., a Panamanian corporaion, its agents, successors, attorneys and assigns and all persons claiming through it, be and they hereby are enjoined, pendente lite, from taking any action to remove the yacht "Patricia III" from its present location: and it is further ORDERED, that the parties may submit such further order :and findings of fact and conclusions of law with respect to the relief granted in the within Order as they may deem appropriate, Stewart, J.
3	Filed for Andean Credit, S.A. Notice of Appeal to the U.S.C.A. from the order entered granting pltff. a preliminary injunction. (m/n)
3	Filed Stipulation for Deft. Marine Midland Bank extending time to 11/2/73, Stewart, J.
73	Filed Order Appointing parson to serve process, Stewart, J.
73	Filed Stipulation and order extending time to 10/24/73, Stewart, J.
3	Filed Memorandum on behalf of Andean Credit, S.A.
	Filed Affidavit of Arthur H. Christy, dated 9-26-73
73	Filed Affidavit of Frederick G. Murray, dated 9-21-73
3	Filed Affidavit of Rudolph C. Moultrie, dated 9-20-73
3	Filed Affidavit of Eusebio A. Morales dated 9-19-73
3	Filed Affiavit of Donalkd B. Aberle, dated 9-21-73
3	Filed Memorandum of Platff International Controls Corp. in support of TRO & Preliminary Injunction
73	Filed Transcript of proceedingd dated 9-4-73
73	Filed " " " " 9-13-73
3	Filed " " " " 9-13-73
3	Filed " " " " 9-14-73
73	Filed " " " " 9-26-73
73	Filed " " " " 10-2-73
73	Filed " " " " 10-3-73
73	Filed " " " " 10-4-73
3	Filed " " " " 10-5-73
73	Filed memo. endorsed of counsel stipulating to transmit the attached unsigned order to U.S.C.A. as part of the record on appeal.
73	Filed Affidavit of Virgil Robert Coakley, dated 9-27-73.
3	Filed stip. and order ext. time for deft. Wilbert J. Snipes to answer the amended complaint to Nov-12-73 -- Stewart, J.
	Filed stip. and order ext. time for deft. Frank G. Beatty to answer to Nov-12-73- Stewart, J.
	Filed stip. and order ext. time for deft. Marine Midland Bank to answer to Nov-30-73 -- Stewart, J.
73	Filed findings of fact and conculsions of law on motion for a preliminary injunction against Andean Credit, SA with respect to the Yacht "Patricia III". Stewart, J. m/n
73	Filed ORDER--ORDERED that intervenor Andean Credit, SA is enjoined, pendente lite from moving the vessell "Patricia III" from its present location; etc. as indicated. Stewart, J. m/n
73	Filed Stipulation and order extending time to answer to Nov. 30, 1973 - Stewart, J. (of Deft. Frank Beatty)
73	Filed Stipulation and order that the time of Deft. Wilbert J. Snipes to answer be extended to 11/30/73 - Stewart, J.
73	Filed Consent Order extending time to answer complaint to 11/15/73 - Stewart, J.
73	Filed copy of transcript of record of proceedings dtd: August 18-73.
73	Filed stipulation excluding certain documents from transmission to the U.S.C.A.
73	Filed stip. and order that the time of deft. Marine Midland Bank to answer complaint is ext. to Dec. 28, 1973. So ordered, Stewart, J.

(see Pg. 9)

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DATE	PROCEEDINGS
12/5/73	Filed transcript of [illegible] dated June 18, 1973.
12/5/73	Filed transcript of record of proceedings, dated Sept. 26, 1973
12/5/73	Filed transcript of record of proceedings, dated June 21, 1973
12/6/73	Filed transcript of record of proceedings, dated Oct. 2, 3, 4, 5, 12
Dec.7-73	Filed stip. and order that the time of deft. Frank G. Beatty to answer complaint is ext. to Dec. 31,1973. So ordered, Stew
Dec.7-73	Filed stip. and order that the time of deft. Wilbert J. Snipes the amendec omplaint is ext. to Dec. 31,1973. So ordered,
Dec.13-73	Filed consent order modifying preliminary injunction.ORDERED preliminary injunction herein dated July 3, 1973 and filed 5,1973 and as heretofore amended,be and the same hereby is amended and modified as follows(as indicated).Stewart, J.
Dec.20-73	Filed ORDER modifying preliminary injunction(as indicated), St m/n
Jan.2-74	Filed stip. and order that the time of deft. Marine Midland Ban answer complaint is ext. to Jan.25,1974. So ordered, Stewart
Jan.4-74	Filed ORDER modifying preliminary injunction dated July 3,1973 July 5,1973 is amended,etc as indicated. Stewart,J. m/n
Jan.24-74	Filed stip. and order that the time of deft. Vesco and Co., In to answer amended complaint is ext. to Jan. 21,1974.Stewart
Dec.28-73	Filed Order modifying preliminary injunction--ORDERED that preliminary injunction dated July 3,1973 and filed on July as amended by order of this Court filed Dec.20,1973 is amended and modified as indicated. Stewart, J. m/n
~~Jan.7-74~~	~~Filed affdt. byptf. of Joseph A. Bondi.~~
Jan.17-74	Filed consent order modifying prelimary injuction--ORDERED th preliminary injunction dated July 3, 1973 and filed July 5, is amended and modified as follows: Shanley and Fisher,Es to disburse from such funds as it holds, the sum of $ Leasing Corp. for use by Skyways Leasing Corp. in payment o insurance premium onthe Boeing 707 aircraft. Stewart, J.
Jan.28-74	Filed stip. and order that the time of deft. Marine Midland answer complaint is ext. to Feb. 22, 1974. Soordered, St
Jan.29-74	Filed stip. & order that the time of deft. Vesco & Co.,Inc. amended complaint is ext. to Feb. 5, 1974.Stewart,J.
Feb. 1-74	Filed consent order modifying preliminary injuction dated July 1973 and filed July 5, 1973 as indicated. Stewart, J.
Feb.6-74	Filed stip. and order that the time of deft. Vesco and Co., amended complaint is ext. to Feb. 12, 1974.
Jan.31-74	Filed pltfs. affdt. of C. Leonard Gordon in support of appl for an order authorizing any member of the firm of Gold Henderson to effect service of process upon the d
Jan.7-74	Filed affdt. of Joseph A. Bondi that he served subpoena and complaint upon: Norman LeBlanc by Miss Russell on 10/22/73 Columbus Trust Co.,ltd. by Frederick Murray on 10/23/73 Butlers Bank Ltd.(now known as the Notaries,Ltd.) 10/23/73 Allan J. Butler by (maid) on 10/23/73 Bahamas Commonwealth Bank by receptionist on 10/24/73 International Bancorp by receptionist on 10/24/73 Kilmorey Investments,Ltd. by receptionist on 10/24/73

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DATE	PROCEEDINGS
	IOS,Ltd. byreceptionist on 10/24/73 Value Capital Ltd. by receptionist on 10/24/73 Global Holdings,Ltd. by receptionist on 10/24/73 Global Financial Ltd. by receptionist on 10/24/73 Robert L. Vesco by mail on 10/25/73 Gilbert R. J. Straub by mail on 10/25/73
8-74	Filed Pltf's. Notice of Deposition of Marvin Hoffman on 2/18/74 at 10:00 A.M.
5-74	Filed for Pltff. Notice of Deposition of Joel Crady on 2/11/74 for oral examination.
1-74	Filed pltf's affdvt. and ORDER TO SHOW CAUSE why an order should not be made modifying the order of preliminary injunction. Ordered that pending the determination of the instant application, this Court's order of preliminary injunction is modified as indicated. - ret. 2-15-74 at 9 AM in Room 2602 - Gurfein, J.
.13-74	Filed for Deft. ANSWER to Amended Complaint
.19-74	Filed JUDGMENT--ORDERED AND DECREED that pltf. have judgment against deft. Value Capital Ltd. as deman ded in the complaint;ORDERED AND DECREED that deft.Value Capital Ltd. be and is liable to pltf. for all loss, damage,cost and expense arising from the acts alleged in Count I of the complaint and that the amt. of said loss be determined by the Court upon an open hearing to be set down and held on a day designated by pltf. upon the pltf. giving deft. Value Capital Ltd. 10 days notice of said hearing by registered or certified mail at PO Box 4815,Nassau,The Bahamas,etc. as indicat Stewart, J. m/n Judgment entered Clerk. Entered on docket 2/20/74
19-74	Filed JUDGMENT BY DEFAULT--ORDERED AND DECREED that pltf. have judgment against deft. Bahamas Commonwealth Bank as demanded in the complai Ordered that deft. Bahamas Commonwealth Bank be and is liable to the pltf. for damages in the amt. of$500,000 together with interest of the acts alleged in Count XI of the complaint;ORDERED that deft. Bahamas Commonwealth Bank is liable to pltf. for all loss,damage, cost and expense arising from the acts alleged in Count I of the complaint and that the amt. of said loss be determined by the Court upon a hearing to be set down and held on a day designated by pltf. upon the pltf. giving the deft. Bahamas Commonwealth Bank 10 days notice of said hearing by registered or certified mail at PO Box N3909,Nassau,The Bahamas,etc. as indicated. Stewart, J. m/n Judgmer Entered Clerk Entered on docket 2/20/74.
eb.20-74	Filed intervenor Andean Credit,S.A. affdt. of Arthur H. Christy in support of theirapplication to the court pursuant to rule 65(c) of FRCP to require pltf. to post security for the detention of the yacht Patricia III in accordance with an order of prel. inj. issue on Nov.9,1973 by this court.
b.20-74	Filed intervenor Andean Credit SA memorandum of law.
27-74	Filed ORDER MODIFYING PRELIMINARYINJUNCTION--ORDERED that the order of pr inj. of this court dated Nov.9,1973 is modified to the extent indicat ORDERED that the address recited inthe order of Prel. Inj. dated Nov as the present location of the yacht Patricia III be changed from Her Stevens Dry Dock at 1270 N.W.11th St,Miami,Florida to Lauderia Ocean Terminal,750 N.E. 7thAve,Dania,Florida,etc. as indicated. m/n Stewart, J.
eb.28-74	Filed stip. and order that the time of deft. Marine Midland Bank to answer complaintis ext. to March 22,1974. So ordered, Stewart,J.

(Case fig. 11)

DATE	PROCEEDINGS
Feb.27-74	Filed affdt. of service by Eduard Van Bemmel(behalf of defts. by Gowling and Henderson,Ottawa Agents for their solicitors) that on Feb. 15,1974 he served personally Jean Romeo Lajoie wi true copy of the order appointing person to serve process the affdt. by C. L. Gordon and the amended complaint.
Mar.5-74	Filed pltfs. OSC--ORDERED that intervenor Andean Credit,SA show ca in Rm.2602 on March 6,1974 at 4:30pm why an order should not b entered herein further modifying the order of prel. injunction dated Nov. 9,1973;Ordered that service of a copy of this order supporting papers upon Christy Frey andChristy,counsel for interventor Andean Credit SA on or before March 5, 1974 at 2pm. Stewart, J.
Mar.6-74	Filed stip. and order that the time of deft. Wilbert J. Snipes to answer amended complaint is ext. to March 31,1974. So ordered, Stewart, J.
Mar.6-74	Filed stip. and order that the time of deft. Frank G. Beatty to a complaint is ext. to March 31,1974.
Mar.7-74	Filed DEFAULT JUDGMENT-- ORDERED that pltf. have judgment against deft. Columbus Trust Co.,Ltd as demanded in the complaint,etc. as indicated. Stewart, J. m/n Judgment entered Clerk. entered on docket 3/11/74.
Mar.20-74	Filed ORDER--ORDERED that the order of preliminary injunction dat Nov.9,1973 is modified to the extent indicated herein; that ICC s file with this Court a bond in the sum of $50,000 which good and sufficient surety for payment of such costs and damages as may be incurred or suffered by Andean;that ICC shall within 60 days from date hereof take appropriate steps to bring on before the Court a inquest for the purpose of reducing to a liquidated amt. the defa jdgt. entered against deft. Vesco on Oct.5,1973. So ordered,Ste m/n
Mar.26-74	Filed stip. and order that the time for deft. Marine Midland Bank answer complaint is ext. to April 19,1974. So ordered, Stewart,J.
Apr.4-74	Filed pltfs. OSC--Ordered that intervenor andean credit SA show cau April 4,1974 at 9:30am in Rm.2602 why an order should not be ent modifying court's order of March 20,1974 which order in turn modifi this Court's order of prel. inj. dated Nov. 9,1973 etc;that the for ICC to file a bond is ext. from Apr.5,1974 to April 10,1974 further ordered that service of a copy of this order be served counsel for intervenor Andean Credit on or before April 3,1974 b 5pm.Stewart,J.
Apr.4-74	Filed ORDER--ORDERED that this Court's order dated March 20,1974 modified to the extend herein and ORDERED that the bond or undertaking referred to in the 3rd decretal paragraph of said 20,1974 order may be secured by the deposit of cash, a certifie check drawn tothe order of the clerk,USDC,SDNY or bonds of th or a combination thereof ,etc. as indicated. Stewart, J. m/n
Apr- 9-74	Filed stip. and order ext. time for deft. Frank G. Beatty to answer to 4-30-74 -- Stewart, J.
Apr- 9-74	Filed stip. and order ext. time for deft. Snipes to answer to 4-30-74. -- Stewart, J.
Apr.4-74	Filed intervenor Andean Credit,SA notice of appeal to the USCA f part of the order entered on March 20,1974 requiring pltf. to with this court a bond in the sum of $50,000.(copies mailed).

(over)

PROCEEDINGS

Filed ORDER--ORDERED that the deposit by ICC of said 5 3/4% US Treasury Notes maturity Nov.15,1974 in the total amt. of $50,000 and a certified check in the amount of $700. as security for the bond directed by this Court's March 20,1974 order is approved and that the Clerk of the Court shall accept said US Treasury Notes and certified check as security for the aforesaid bond. Stewart, J.m/n

Rec'd from ICC a check in the sum of $700.00 and deposited the same in the Registry of the Court;also rec'd. bonds(5) Five treasury notes in the face amt. of $10,000--with 2 coupons attached to each bond maturing bonds# as follows: 42828
68012
73750
73751
75292(envelope#1510-Bond Book)

as per Cahiers office.

-74 Filed pltfs. notice of appeal to the USCA from the part of the order entere on March 20,1974 which required pltf to file with this Court a bond in the sum of $50,000.(copies mailed)

74 Filed stip. and order that the time of deft. Marine Midland Bank to answer complaint is ext.to May 17,1974. So ordered, Stewart,J.

10-74 Filed pltfs, undertaking on preliminary injunction.

74 Filed pltfs. affdt. and notice of motion for partial inquest for the purpose of making a partial determi nation of pltfs. losa,damage and expenses which deft. Robert Vesco has found to be liable to pltfs.Judgment entered on Oct.5,1973 ret. on: May 14,1974.

-74 Filed Receivers affdvt. and order to show cause that any person receiving notice thereof and desires to object to the order annexed hereto (permitting receiver to intervene) appear and show cause in room 705 on 5-14-74 at 4 PM. -- Stewart, J.

74 Filed stip. and order that the time of deft. Frank Beatty to answer complai is ext. to May 31, 1974.So ordered, Stewart, J.

-74 Filed stip. and order that the time of deft. Wilbert Snips to answer amended complaint is ext. to May 31, 1974. So ordered,Stewart, J.

74 Filed stip. and order that action is dismissed to the following defts. with prejudcie and without costs:Fairfield General Corp.
Fairfield Aviation Corp.
Skyways Leasing Corp. So ordered,Stewart,J.

6-74 Filed ORDER--ORDERED that said receiver John K. Schemmer is permitted to intervene in this action.Stewart, J. m/n

-74 Filed stip. and order that the time of deft. Marine Midland Bank to answer complaint is ext. to June 14,1974. So ordered, Stewart, J.

5-74 Filed mandate with true copy of decision of the USCA--Ordered that the orders of said District Court be & they hereby are affirmed as modified as to appellants, Fairfield,General Corp. et al & as to appellant Vesco & Co.,Inc. but as to appellant Andean Credit SA said order be & it hereby is affirmed and that the action as to Andean Credit SA is remanded to said

(see page -13)

District Court for further proceedings in accordance with the opini
of this court with costs to be taxed against the appellants. Clerk

m/n

ay 21-74 Filed order--ORDERED that a summons and the intervenor complaint o
receiver John K. Schemmer shall be served upon defts. Robert Vesco
Norman LeBlanc and Richard Clay by personal service in the Bahamas
Fred Seymour, Deputy Provost Marshal of the Bahamas or any orther
person lawfully designated the the Provost Marshal of the Bahamas
registered, RRR as indicated. Stewart, J. m/n (166) (166)

May 21-74 Filed stip. and order that the time of deft. IOS is ext. to June
1974 to answer the complaint. So ordered, Stewart, J. (165) (165)

May 28-74 Filed ORDER--ORDERED that this Court's May 21, 1974 order regardi
the service of summonses and copies of the intervenor complaint of
K. Schemmer, Receiver upon certain defts. is modified by substituti
the receiver's amended intervenor complaint for said receiver's
intervenor complaint. Stewart, J. m/n (168)

May 30-74 Filed receiver John K. Schemmer notice of filing of true copy of
amended intervenor compalnt which was filed in theclerks office on
May 24, 1974 (170) (170)

May 20-74 Filed receiver John K. Schemmer notice of entry of a copy of an
order filed and entered on May 16, 1974 (169) (169)

May 20-74 Filed intervenor complaint by Andean Credit and John K. Schemmer
(addtl. summons issued) (163) (163)

May 22-74 Filed receiver, John K. Schemmer notice of filing a true copy of
intervenor complaint which was filed in the Clerk's office on May
20, 1974. (167) (167)

May 24-74 Filed intervenor John K. Schemmer amended intervenor complaint.

Jun17-74 Filed stip. and order that the time ofdeft. I.O.S.Ltd. to answer
complaint is ext. to July 11, 1974. So ordered, Stewart, J. (172) (172)

Jun 18-74 Filed stip. and order that the time ofdeft. Marine Midland Bank
complaintis ext. to July 12, 1974. So ordered, Stewart, J. (173) (173)

Jun 21-74 Filed stip. and order that the time of pltf. to answer the amend
complaint of intervenor John Schemmer is ext. to June 28, 1974.
So ordered, Stewart, J. (174) (174)

Jun- 6-74 Filed Receiver's affdvt. of service re additional summons and
amended intervenor Complaint of Receiver - served:
Robert L. Vesco, Norman Le Blanc, Clobal Financial Ltd.,
Value Capital Ltd., International Bancorp., Bahamas Commonwe
Bank and Columbus Trust Co. Ltd. --- all by registered mail o
5-28-74 to addresses listed herein and additional summons an
Intervenor complaint on Robert L. Vesco and Norman LeBlanc
6-5-74 by registered mail to addresses indicated herein.

Jun- 7-74 Filed notice of entry of orders (2) filed on 5-21-74 and 5-28-

Jul 8-74 Filed stip. and order that the time of dett. Frank Beatty to ans
complaint is ext. to July 31, 1974. So ordered, Stewart, J. (176) (

Jul 8-74 Filed stip. and order that the time of dett. Wilbert Snipes to
amended complaint is ext. to July 31, 1974. Soordered, Stewart, J.

Jul 8-74 Filed stip. and order that the time of pltf. to answer amended
complaint of intervenor John Schemmer is ext. to July 12, 1974.
Soordered, Stewart, J. (177) (177)

Jul-12-74 Filed plaintiff's affdvt. and notice of partial inquest re def
Vesco - on 6-21-74 at 4 P.M.

Filed Transcript, dated (181) (181)
(182) (182)
(180) (180)

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DATE	PROCEEDINGS
12-74	Filed JUDGMENT and order ... upon deft. Edgett A. Vose ... to answer complaint ... Clerk.
-16-74	Filed stip. and order that the time of deft. Marine Midland Bank to answer is ext. ... -- Stewart, J. (178) (179) (175)
2-74	Filed Transcript of record of proceedings, dated ...
25-74	Filed stip and order that the time of deft. IOS, Ltd. to answer complain
(183)	is ext. to Aug. 12, 1974, So ordered, Stewart, J. (185)
18-74	Filed order--ORDERED that Mark J. Freiberg is authorized to effect the s
(184)	of process in this action on deft. Shirley Bailey. Stewart, J. m/n (184) (183)
18-74	Filed pltfs. answer to amended complaint of intervenor John Schemmer.
25-74	Filedpltfs. affdt. of Mark Freiberg that he served a copy of the summons and complaint upon deft. Shirley Bailey, personally and by mail.
.2-74	Filed pltfs. restraining notice to garnishee, re: Bahamas Commonwealth Ban judgment debtor, etc. as indicated.
. 9-74	Filed stip. and order that the time of deft. IOS, Ltd. to answer complair
(186)	is ext. to Sept. 11, 1974. So ordered, Stewart, J. (186)
13-74	Filed stip. and order that the time ofdeft. Marine Midland Bank to
(187)	answer complaint is ext. to Sept. 3, 1974. So ordered, Owen, J. (187)
g. 29-74	Filed consent order that the time ofdeft. Shirley Bailey to answer the amended complaint without waiver of any of herdefenses is ext. to Sept. 23, 1974. Stewart, J. (189) (189)
g. 28-74	Filed transcript of record of proceedings dated July 12, 1974. (188) (188)
p. 23-74	Filed stip. and order that the time of deft. Wilbert Snipes to answer
(191)	amended complaint is ext. to Sept. 30, 1974. So ordered, Stewart, J (191)
p. 23-74	Filed stip. and order that the time of deft. Frank Beatty to answer
(192)	complaint is ext. to Sept. 30, 1974. So ordered, Stewart, J. (192)
.16-74	Filed receiver John Schemmer supplemental affdt. of service by Charles Hance.
.16-74	Filed reciever John Schemmer affdt. of service bv Fred Seylmour.
.16-74	Filed receiver John Schemmer affdt. of service by Fred Seymour.
.7-74	Filed pltfs. affdt. and notice of motion for an order directing that the yacht Patricia III presently being held and detained to Court's order of Nov. 9, 1973 be moved to NY State and to be sold at a public auction, etc. ret. on: Oct. 24, 1974, in Rm. 318.
t. 9-74	Filed stip. and order that the time of deft. Frank Beatty to answer
(193)	complaint is ext. to Oct. 31, 1974. So ordered, Stewart, J. (193)
t. 9-74	Filed stip. and order that the time of deft. Wilbert Snipes to answer
(195)	amended complaint is ext. to Oct. 31, 1974. So ordered, Stewart, J. (195)
t. 9-74	Filed stip. and order that the time ofdeft. Marine Midland Bank to answer
(194)	complaint is ext. to Nov. 1, 1974. So ordered, Stewart, J. (194)
t. 22-74	Filed receiver, John K. Schemmer affdt. in opposition of Bernard Cedarba
t. 23-74	Filed deft. Shirley Bailey notice that she is represented by Layton and S
(196)	50 Rockefeller Plaza, NYC 10020 (196)

(see 13 - 15-)

JS 116 Rev. Civil Docket Continuation

PROCEEDINGS

DATE	
Dec. 3-74	Filed pltfs. supplemental affdt. of service of David Butowsky.
c.17-74	Filed JUDGMENT #74,971---ORDERED that the clerk of the court enter mjugment against deft. Bahamas Commonwealth Bank in the amt. of $500,000 with interest in the money judgment book of this court nunc pro tunc as of Feb. 19,1974. Stewart,J. m/n judgment entered, clerk entered on docket 12/18/74 (198)
12-30-74	Time extension for dft. Marine Midland Bank (1
1-9-75	Time extension for Frank G. Beatty (200)
1-9-75	" Wilbert J. Snipes (201)
01-30-75	Filed stip. and order that the time of deft. Marine Midland Bank to answer is ext. to 2-28-75 -- Stewart, J. (202)
-03-75	Filed stip and order extending deft. Wilbert J. Snipes time to answer amended complaint to 2-28-75. Stewart, J. (204)
2-75	Filed stip and order extending deft. Frank G. Beatty time to answer or make motion to 2-28-75 (203) Stewart, J.
2-21-75	Filed order directing Clerk to deliver to ICC US Treasury Notes, 5-3/4%, Maturity 2-15-75, payable to bearer withcoupon attached heretofore dlvd. to the clerk on 11-22-74, serial numbers as indicated (5) in the total amount of $50,000. orders that deposit by ICC of 5-7/8% US Treasuary Notes, maturity 8-15-75 in the total face value of $50,000. in place of the above mentioned Treas. Notes, maturity 2-15-75 as security for the bond as indicated, is approved. Clerk to accept... said Treas. Notes maturity 8-15-75--Stewart, J. (205)
2-25-75	Filed memo. deposit in the Registry of the Court--endorsed on above order-- Rec above list Notes 57923, 57924, 57925, 57926, & 13121 With coupons
2-25-75	Rec'd 5 Treasury Bills Face amount of $10,000 w/ coupons attached 57199, 57200, 57201, 57202, 57204.
-03-75	Filed stip. and order ext. deft. Wilbert J. Snipes time to answer to 3-31-75 --Stewart, J. (207)
3-03-75	Filed stip. and order ext. deft. Frank G. Beatty time to answer to 3-31-75-- Stewart, J. (206)
3-03-75	Filed stip. and order ext. deft. Marine Midland Bank time to answer to 3-28-75 --Stewart, J. (208)
3-21-75	Filed stip. and order ext. deft. Frank G. Beatty time to answer to 4-30-75 --Stewart, J. (210)
3-24-75	Filed stip. and order ext. deft. Wilbert J. Snipes time to answer to 4-30-75 --Stewart, J. (209)
28-75	Filed Default Judgment and Order that the Clerk of the Court enter Judgment against deft Bahama Commonwealth Bank in the sum of $500,000.00 with interest in the money judgment book of this Court nunc pro tunc as of 2-19-74--Stewart, Judgment entered 3-31-75--clerk m/n (211)
4-02-75	Filed stip. and order ext. deft. Marine Midland Bank time to answer complaint to 4-25-75--Stewart, J. (212)
49 04-01-75	Filed prehearing memorandum of deft Vesco & Co. Inc.
50 04-03-75	Filed pltf. pre-hearing memornadum
04-04-75	Filed ORDER in re. to a judgment entered against Robert L. Vesco on Oct. 5. 197 and one entered on 7-18-74. Ordered, that both of said judg. are and were at the times when they were entered final judg. of this Court; and it is further Ordered, that no further action of this court or any other court is required

(con't on next page)

PROCEEDINGS

Date Or Judgment

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before the Judg. entered July 18, 1974 may be presented for execution to any court of general jurisdiction in the U.S. or any foreign court that recognizes the valfdity of Judg. and it is further Ordered, that the Judg. entered July 18, 1974 and the pltf's right to have execution thereunder for the amount of $2,188,354.93 are and will be in no way affected by the pltf's right to prove and to recover other amounts pursuant to the judg. entered Oct. 5, 1973--Stewart, J. m/n (213)

6-75 Filed stip. and order ext. deft. Marine Midland Bank time to answer to 5-30-75 --Stewart, J. (214)

5-75 Filed stip. and order that the time of deft. Robert Snipes to answer the amended complaint is ext. to May 31,1975. So ordered,Stewart,J. (215)

Filed stip. and order that the time of deft. Frank Beatty to answer the complaint is ext. to May 31,1975. So ordered,Stewart,J. (216)

Filed pltf. affdvt. and Order to Show Cause that Intervenors show cause why an order should not be entered modifying the order of preliminary injunction of this Court date 11-9-73. ret. 6-6-75 in Rm. 2602 at 10:30 a.m. personal service rendered on or before May 28,1975 5:0.m.--Stewart, J. (217)

02-75 Filed Counter Order that pltf. appear for deposition on or before 6-16-75 with pltf. right to object to any question at deposition --Stewart, J.

29-75 Filed affdvt. of Stella L. Scott of service by mail served Order to Show Cause and affdvt. of Daniel L. Carroll on

atty's for defts Christy Frey & Christy Dornbush Mensch Mandelstam & Schwartz atty. for deft Marine Midland Bank Sullivan & Cromwell atty. for deft Marine Midland Bank Carter Ledyard & Milburn atty for J.K. Scherer

Filed affdvt. of service of Harry J. Charonos on May 21st. 1975 he served Order to Show Cause and accompanying affdvt. of Daniel L Carroll by personally del. upon Hannoch Weisman Stern & Besser 744 Broad St. Newark, NJ

Filed affdvt. of service of Louis Brander on 5-20-75 he served Order to Show Cause and accompanying affdvt. of Daniel L. Carroll upon Robert L. Vesco by mail 170 Denville Rd. Boonton Township .J. #115509

Filed affdvt. of service of Stella L. Scott that on5-20-75 she served by certified mail copies of the same on R. L. Vesco 170 Denville Rd. Boonton Township, N.J. #020760(all under the same cover).

-03-75 Filed affdvt. of Daniel L. Carrol submit to bring to the attention of the court sope additional facts in connection with ICC's application brought on by order to show cause.

-03-75 Filed pltf. memorandum of law in support of motion. (218)

-04-75 Filedstip. and order ext. deft. Marine Midland Bank time to answe to 6-27-75-- --Stewart, J. (219)

-04-75 Filed pltf. affdvt. and order to show cause Ordered that defts Robert L. Vesco & Co. Inc. and any other party having an interest in the subj. matter show cause why an order should not be entered herein appointing a receiver etc. ret. 5-28-75 10:30 in Rm. 2602 personal service rendered on or before 5-21-75--Stewart, J. (220)

-12-75 Filed Order appointing a receiver that the determination of pltf's application withih with respect to Vesco & Co., Inc. be and the same is held in abeyance pending the holding of a hearing solely for the purpose of determining whether pltf is entitled to enforce its judgment against R. L. Vesco proceeding against the stock of International Controls Corp. held of record by Vesco & Co., Inc. and Ordered, that the hearing provided for herein be held on 6-30-75 at 10:30a.m. --Stewart, J. m/n (221)

-04-75 Filed affdvt. of service by mail of Louis Brander served Robert L. Vesco with Memo. of law Brace Rider Bl. Hasnau, Rabinowitz #266150 #266151

DATE	
[illegible]-75	Filed affdvt. of service by [illegible] upon Robert L. Vasco, Treasurer, Vasco [illegible] Co., Inc. on 6-23-75
06-24-75	Filed affdvt. of service by mail of Stella L. Scott that she served upon all parties listed herein on 6-23-75
06-24-75	Filed affdvt. of Stella L. Scott that she served memorandum of law upon Robert L. Vasco P.O. Box N-8232, Nassau, Bahamas on 6-23-75
06-24-75	Filed affdvt. of service by mail of Stella L. Scott that she served-- Suppl. affdvt. on all parties herein on 6-20-75
06-24-75	Filed affdvt. of service by mail of Irving A. Barnach that he served-- supal. affdvt. upon Robert L. Vasco 170 Denville Rd. Cheston Township, N.J. #115511 R. L. Vasco Bruce Ridge Rd. Nassau, Bahamas and R. L. Vasco P. O. Box N-8232 #356825 #356825. (all under one cover)
07-01-75	Filed stip. and order ext. deft. Wilbert J. Snipes time to answer to the amended complaint to 7-31-75--Stewart, J. (222)
07-01-75	Filed stip. and order ext. deft Frank G. Beatty time to answer to 7-31-75 --Stewart, J. (223)
07-07-75	Filed stip. and order ext. deft. Marine Midland Bank time to answer to 7-25-75 --Stewart, J. (224)
07-10-75	Filed Order that the Master of the yacht "Patricia L III" now know as "Joya Oceania" is directed to deliver possession of said yacht to David M. Butowsky: ect. and ordered that said David M. Butowsky is directed behalf of this court to request the appropriate authorities in the Bahama including the appropriate court in the Bahamas to take all appropriate measure to assist him in regaining possession of said yacht and returning it to the territorial limits of the United States--Stewart, J. (225)
07-10-75	Filed pltfs. affdvt and Order to Show Cause Ordered, that Andean Credit, S.A. et show cause in Rm. 2704 at 11:00a.m. on 7-11-75 why an order should not b and entered pursuant to rule 42 (226)
07-29-75	Filed stip. and order ext. deft. Marine Midland Bank time to answer to 8-9-75-- Stewart, J. (227)
08-06-75	Filed stip. and order that the time of deft. Frank Beatty to answer complaint is ext. to Aug. 31,1975. So ordered, Stewart, J. (228)
08-06-75	Filed stip. and order that the time of deft. Wilbert Snipes to answer amende complaint is ext. to Aug. 31,1975. So ordered, Stewart, J. (230)
08-07-75	Transcript of proceedings dated June 6, 1975 (229)
08-26-75	Filed pltf. affdvt. and order to show cause that Intervenor show cause why an order should not be made and entered pursuant to rule 65 rot. on 9-9-75 2602 at 9:30a.m. Personal service to be rendered on or before 8-26-75 --Owen, J. (232)
[illegible]	[illegible] (237)
09-02-75	Filed deft Vasco & Co., Inc.'s brief in opposition to order to show cause (234)
09-02-75	Filed pltf. Post-hearing memorandum (233)
09-02-75	Filed pltf. memorandum of law in support of motion
09-03-75	Filed stip. and order ext. deft. Marine Midland Bank time to answer to the complaint to 9-29-75--Stewart, J. (240)
09-03-75	Filed stip. and order ext. deft. Frank G. Beatty time to answer to the amend complaint to 9-30-75--Stewart, J. (239)
09-03-75	Filed stip. and order ext. deft Wilbert J. Snipes time to answer the amended complaint to 9-30-75--Stewart, J. (238)
09-05-75	Filed Order appointing Andrew Maloney, Esq. of the law firm of Maloney, Vivi as receiver --Stewart, J. (242) n/n
09-04-75	Filed deft. post-hearing memorandum (241)

(continued on page 18)

p18

Filed memorandum of Vesco & Co (243) 243

Filed . affdvt. in opposition to an application by pltf. brought on by an Order to Show Cause (by Intervenor Andean Credit)

Filed Order that no further action of this court or any other court is required before judgment entered 7-16-75 for execution to any court of jurisdiction in the U.S. or any foreign court. the judgment entered 7-16-75 and the pltf's right to have execution thereunder for the amount of $2,188,354.93, are and will be in no way affected by pltf's right to prove and to recover other amounts pursuant to the judgment entered 10-5-73; and that hereinabove order shall succeed the Order signed 4-3-75 and filed by the Clerk of the Court 4-4-75--Stewart, J. (244)n

Filed MEMORANDUM #42991 Pltf. motion for an order permitting it to satify some of its outstanding default judgt. against Vesco through certain assets of "Vesco & Co". We think that pltf. ICC has demonstrated that the INC. of Vesco & CO. was not for a valid corporate purpose, but rather was an attempt by Vesco to immunize his assets from liability while maintaining personal control over and use of those assets.. In view of this finding, we find it desirabee to appoint a receiver to collect those assets. defts. Vesco and Vesco & Co. are directed to turn over all cert. of shares of ICC and Fairfield Gen. Corp. Stock in their possession, custody or control, to the receiver within 20 days of appointment, whether cert. are within the U.S. However, we modify this order in accordance with Hoss. deft. Vesco. a non-resident of the U.S. shall first apply for such official consent to such transfer as may be required in order to provide against opposibility that any action ordered..will violate foreign law Pltf. has additionally request that this court issue an order permittin ICC to cancel the stock held by Vesco and Vesco & Co. We defer decision on the right of ICC as judgment creditor to seek cancellation of stock held by Vesco and Vesco & Co. as judgment debtor until such time as it may become necessary to decide So (251) Ordered--Stewart, J. m/n (received in unit -5- for docketing date 9-18-75)

July 15, 1975 (245)

Filed deft. Vesco & Co.. Inc notice of appeal to the U.S.C.A. for Second Circuit from the whole opinion and order of 3-22-75 mailed copy to Shea, Gould Climenko, Kramer & Casey

Filed Order pltf. having moved by order to show cause dated 5-20-75 for an order pursuant to rule 69 (246)

Filed Order that Andrew Maloney shall collect and sell the following property in which deft Robert L. Vesco has interest to all shares of common stock of International Controls Corp. in possesion or control of deft. R. L. Vesco and by deft. Vesco & Co. Inc. etc. as indicated herein and directing defts to deliver shares to be cancelled and reissued to receiver Andrew Maloney if deft. fails to deliver as opposed. a certified copy of the within order shall be mailed to deft Robert L. Vesco on or before 9-26-75 by cert. mail ret. receipt requested, addressed to deft R. L. Vesco at 770 Denville Rd. Booton Towship, N.J. 07005 and at Bruce Rd. Nassau, Bahamas, a certi. copy of the within order shall be mailed to Trident Bank Ltd. on or before 9-26-75 at Trident Bank Ltd. P. O. box 4815 Nassau, Bahams and that the decision i deferred on the remainder of the relief requested by pltf on the instant application, and pltf. shall have the right to make further application to this court for such relief .--Stewart, J. m/n (copies will be mailed by pltf atty's)

Filed stip. and order ext. deft Wilbert J. Snipes time to answer the amended complaint to 10-31-75--Stewart, J. (continued on page-19-) (247)

L. VESCO ET AL.

C. 110 Rev. Civil Docket Continuation

PROCEEDINGS

DATE	PROCEEDINGS	Da Judg
10-01-75 248	Filed stip. and order ext. deft Frank G. Beatty time to answer to the amended complaint to 10-31-75--Stewart, J.	
10-03-75 249	Filed stip. and order ext. deft. Marine Midland Bank time to answer to 10-31-75	
250	[illegible]	
251	[illegible]	

Summons and Complaint filed June 7, 1973.

(21a - 51a)

Summons and Complaint

SUMMONS IN A CIVIL ACTION

22a

Formerly D. C. Form No. 45 Rev. (9-47)) CIV. 1 (3-64)

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff

v.

ROBERT L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, NORMAN LeBLANC, STANLEY GRAZE, MILTON F. MEISSNER, ULRICH J. STRICKLER, RICHARD E. CLAY, WILBERT J. SNIPES, FREDERIC J. WEYMAR, GILBERT R.J. STRAUB, C. HENRY BUHL, III, RALPH P. DODD, ALWYN EISENHAUER, GEORGE PHILLIPE, JOEL GRADY, SHIRLEY BAILEY, VESCO & CO., I.O.S. LTD., BAHAMAS COMMONWEALTH BANK, INTERNATIONAL BANCORP, KILMOREY INVESTMENTS LTD., VALUE CAPITAL, LTD., GLOBAL HOLDINGS LTD., GLOBAL FINANCIAL, LTD., BUTLERS BANK LTD. (now known as WHO Holdings Ltd.), ALLAN J. BUTLER, BANK CANTRADE LTD., FAIRFIELD AVIATION CORPORATION, FAIRFIELD GENERAL CORPORATION, SKYWAYS LEASING CORPORATION and MARINE MIDLAND BANK Defendants

CIVIL ACTION FILE NO. 73 Civ 2518 (CES)

SUMMONS

To the above named Defendants :

You are hereby summoned and required to serve upon SHEA GOULD CLIMENKO & KRAMER

plaintiff's attorney , whose address is 330 Madison Avenue, New York, N. Y. 10017,

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

/s/ T. O'Andreas
Clerk of Court.

/s/ B. Edwards
Deputy Clerk

Date: New York, New York
June 7, 1973

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, NORMAN LeBLANC, STANLEY GRAZE, MILTON F. MEISSNER, ULRICH J. STRICKLER, RICHARD E. CLAY, WILBERT J. SNIPES, FREDERICK J. WEYMAR, GILBERT R. J. STRAUB, C. HENRY BUHL III, RALPH P. DODD, ALWYN EISENHAUER, GEORGE PHILLIPE, JOEL GRADY, SHIRLEY BAILEY, VESCO & CO., IOS LTD., BAHAMAS COMMONWEALTH BANK, INTERNATIONAL BANCORP, KILMOREY INVESTMENTS LTD., VALUE CAPITAL LTD., GLOBAL HOLDINGS LTD., GLOBAL FINANCIAL LTD., BUTLERS BANK, LTD. (now known as WHO HOLDINGS LTD.), ALLAN J. BUTLER, BANK CANTRADE LTD., FAIRFIELD AVIATION CORPORATION, FAIRFIELD GENERAL CORPORATION, SKYWAYS LEASING CORPORATION and MARINE MIDLAND BANK,

Defendants.

73 Civ 2545

COMPLAINT

Plaintiff, by its attorneys David M. Butowsky and Shea Gould Climenko & Kramer, for its complaint herein, alleges upon information and belief:

APPLICABLE TO ALL COUNTS

1. Plaintiff brings this action to recover money damages and other relief by reason of defendants' violation of various provisions of the Securities Exchange Act of 1934 (15 U.S.C. §§78a et seq.) and the rules and regulations adopted and promulgated thereunder and by reason of defendants' breach of various state law and common law duties owed by defendants to plaintiff.

2. This Court has jurisdiction of this action by reason of §27 of the Securities Exchange Act of 1934 (15 U.S.C. §78aa) and the principles of pendent jurisdiction.

3. The acts and transactions complained of herein occurred, among other places, within the Southern District of New York.

4. Plaintiff, International Controls Corp. ("ICC") is a Florida corporation which has its principal place of business in Fairfield, New Jersey. It is engaged in various diversified business enterprises, and it has plants and offices throughout the United States. The common stock and warrants of ICC are listed on the American Stock Exchange.

5. (a) Defendant Robert L. Vesco ("Vesco") is a United States citizen who, at times relevant to this complaint, by reason of his ownership of more than 24% of ICC's outstanding stock, controlled and dominated ICC, and also, at various times, controlled and dominated defendants IOS, Ltd. and its subsidiaries, and Fairfield General Corporation and its subsidiaries. At times relevant to this complaint, Vesco has served as chairman of the board of directors, chief executive officer of and consultant to plaintiff ICC; chairman of the board of directors, chairman of the finance and member of the executive committees of defendant IOS; a director of defendant Bahamas Commonwealth Bank; director of defendant International Bancorp; director and president of defendant Value Capital; a director of defendant Fairfield General Corporation; president and a director of Fairfield Aviation Corporation; and vice president and a director of Skyways Leasing Corporation.

(b) Defendant Frank G. Beatty ("Beatty") is a United States citizen who, at times relevant to this complaint, has served as executive vice president--administration and finance, treasurer, acting chief executive officer and a director of plain-

tiff ICC; president, vice president, treasurer and director of defendant Fairfield General Corporation; vice president, treasurer and a director of Fairfield Aviation Corporation; vice president, treasurer and a director of defendant Skyways Leasing Corporation as well as vice president, treasurer and a director of defendant Value Capital Ltd.

(c) Defendant Harry L. Sears ("Sears") is a United States citizen who, at times relevant to this complaint, was an attorney representing defendant Vesco and a director of plaintiff ICC.

(d) Defendant Norman LeBlanc ("LeBlanc") is a Canadian citizen. At times relevant to this complaint, he has served as executive vice president, chief financial officer and director of defendant IOS, director of defendant International Bancorp, president and director of defendant Global Holdings, president and director of defendant Global Financial, and president, treasurer and purported shareholder of defendant Kilmorey Investments.

(e) Defendant Stanley Graze ("Graze") is a United States citizen who, at times relevant to this complaint, has served as portfolio manager for various mutual funds managed by defendant IOS, including Venture Fund (International) N. V. ("Venture Fund"), Fund of Funds Ltd. ("Fund of Funds"), IIT, an International Investment Trust ("IIT") and Transglobal Growth Fund, Ltd. ("Growth Fund"). He purportedly was a shareholder of defendant Kilmorey Investments.

(f) Defendant Milton F. Meissner ("Meissner"), among other things, is a United States citizen who, at times relevant to this complaint, has served as executive vice president,

president and director of defendant IOS, and was a purported shareholder of defendant Kilmorey Investments.

(g) Defendant Ulrich J. Strickler ("Strickler") is a Swiss citizen. At times relevant to this complaint, he has served as consultant to and director of defendant IOS, president and director of an ICC subsidiary, and director, officer and purported shareholder of Kilmorey Investments.

(h) Defendant Richard E. Clay ("Clay") is a United States citizen, who, at times relevant to this complaint, has served as vice president--office of the chairman of plaintiff ICC; vice president and a director of defendant International Bancorp; director of defendant Bahamas Commonwealth Bank; president and a director of defendant Value Capital; vice president, secretary and director of defendant Fairfield General Corporation; and vice president, secretary and a director of Skyways Leasing Corporation.

(i) Defendant Wilbert J. Snipes ("Snipes") is a United States citizen who, at times relevant to this complaint, has served as a director of plaintiff ICC, director of defendant Bahamas Commonwealth Bank, and senior vice president of American National Bank & Trust of New Jersey.

(j) Defendant Frederic J. Weymar ("Weymar") is a United States citizen who, at times relevant to this complaint, has served as managing director of defendant Butlers Bank, president and director of defendant International Bancorp, and a director of defendant Bahamas Commonwealth Bank.

(k) Defendant Gilbert R. J. Straub ("Straub") is a United States citizen who, at times relevant to this complaint has served as director of European Services for plaintiff ICC, a director and senior vice president of defendant Bahamas Commonwealth

Bank, and a director and senior vice president of defendant International Bancorp.

(l) Defendant C. Henry Buhl, III, ("Buhl") is a United States citizen who, at times relevant to this complaint, has served as director of defendant IOS, and director of Fund of Funds, Growth Fund, Venture Fund and their respective management companies.

(m) Defendant Ralph P. Dodd ("Dodd") is a United States citizen who, at times relevant to this complaint was president and a director of defendant Fairfield General Corporation and vice president and a director of ICC.

(n) Defendant Alwyn Eisenhauer ("Eisenhauer") is a United States citizen who, at times relevant to this complaint, was known as "director of Aviation" of plaintiff ICC but, in reality, he was defendant Vesco's personal pilot.

(o) Defendant George Phillipe ("Phillipe") is a Swiss citizen who, at relevant times, was an officer and director of defendant Bank Cantrade.

(p) Defendant Joel Grady ("Grady") is a United States citizen who, at times relevant to this complaint, was president and a director of Skyways Leasing Corporation, president and a director of Fairfield Aviation Corporation and vice president and a director of Fairfield General Corporation.

(q) Defendant IOS Ltd. ("IOS") is a nonresident Canadian corporation which is or was engaged in holding a complex of mutual fund management companies, companies engaged in managing real estate investment companies, insurance companies, and various banks. IOS, in December 1971, in exchange for securities of

defendant Value Capital, most of which were subsequently distributed to IOS shareholders, transferred to Value Capital certain insurance and real estate management companies and other assets of IOS. IOS, in October 1971, in exchange for certain securities of defendant International Bancorp, most of which were subsequently distributed to IOS shareholders, transferred to International Bancorp various of its banking assets including Orbis Bank GmbH, Overseas Development Bank Geneva, Overseas Development Bank Luxembourg, Overseas Development Bank Bahamas and Overseas Development Bank Curacao.

(r) Defendant Vesco & Co. ("Vesco & Co.") is a Delaware corporation, to which defendant Vesco and his children have transferred certain of their assets.

(s) Defendant Bahamas Commonwealth Bank Ltd. ("Bahamas Commonwealth Bank") is a Bahamian corporation whose principal executive offices are located in Nassau, Bahamas.

(t) Defendant International Bancorp Ltd. ("International Bancorp") is a Bahamian corporation with its principal executive offices in Nassau, Bahamas. It is a holding company for various banking assets spun-off by defendant IOS (as described in paragraph 5(q) above), and it also owns a majority of the outstanding common stock of the Bahamas Commonwealth Bank.

(u) Defendant Kilmorey Investments Ltd. ("Kilmorey Investments") is a Bahamian corporation which, on or about March 30, 1972, acquired from ICC certain former ICC subsidiaries which held certain shares of preferred and common stock of defendant IOS.

(v) Defendant Value Capital Ltd. ("Value Capital") is a Bahamian corporation which was formed in December 1971 and

became the receptacle of various insurance and real estate management companies and other assets of IOS (as described in paragraph 5(q) above).

(w) Defendant Global Holdings, Ltd. ("Global Holdings") is a Bahamian corporation which holds the outstanding stock of Global Financial Ltd.

(x) Defendant Global Financial Ltd. ("Global Financial") is a Bahamian corporation which holds certain securities of defendant Value Capital, defendant International Bancorp and defendant Kilmorey Investments, which were acquired from ICC in June 1972.

(y) Defendant Butlers Bank, Ltd ("Butlers Bank") is a bank formed under the laws of the Bahamas.

(z) Defendant Bank Cantrade Ltd. ("Bank Cantrade") is a bank formed under the laws of Switzerland.

(aa) Defendant Fairfield Aviation Corporation ("Fairfield Aviation") is a New Jersey corporation which was engaged in the general aviation business. On October 18, 1967, ICC acquired all of the issued and outstanding shares of Fairfield Aviation.

(bb) Defendant Fairfield General Corporation ("Fairfield General") is a New Jersey corporation organized on November 19, 1971, as a wholly-owned subsidiary of ICC which on December 9, 1971 acquired from ICC all of the outstanding stock of Fairfield Aviation. Pursuant to a registration statement filed on Form S-1 with the Securities and Exchange Commission on December 14, 1971, all of the stock of Fairfield General was distributed as a dividend in kind to the shareholders of ICC.

(cc) Defendant Skyways Leasing Corporation ("Skyways") was incorporated in New Jersey on December 23, 1970 and is a wholly-owned subsidiary of Fairfield Aviation. Its sole business is the ownership and operation of a Boeing 707 airplane.

(dd) Defendant Shirley Bailey ("Bailey") is a United States citizen who, at times relevant to this complaint, was secretary of ICC and Vesco's personal secretary.

(ee) Defendant Marine Midland Bank ("Marine Midland") is a banking corporation with offices in the Southern District of New York. Marine Midland was the transfer agent and paying agent for the dividend in kind described in paragraph 5(bb).

(ff) Defendant Allen J. Butler ("Butler") is a Bahamian citizen who, at times relevant to this complaint, was, among other things, president of defendant Butlers Bank.

FIRST COUNT

6. Beginning in or about 1970, defendant Vesco and the defendants named in the next paragraph embarked upon a scheme, as set forth hereinafter, by use of the United States mails, means or instrumentalities of interstate commerce and the facilities of national securities exchanges, to defraud plaintiff and its stockholders other than defendants ("its public stockholders"), engaged in acts, practices and courses of business to be described herein, which have operated as a fraud or deceit upon plaintiff and its public stockholders and have made untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading in connection with the purchase and sale of securities issued and/or owned by the following companies:

ICC
IOS Ltd.
Linkink Progressive Corporation, S.A.("Linkink")
American Interland, Inc.
International Bancorp Ltd.
Value Capital Ltd.
Kilmorey Investments, Ltd.
Fairfield General Corporation
Fairfield Aviation Corporation

7. In engaging in the aforesaid scheme and fraudulent acts and practices, defendant Vesco has acted in concert with and has been aided and abetted by defendants LeBlanc, Meissner, Strickler, Graze, Beatty, Clay, Snipes, Weymar, Straub, Buhl, Dodd, Eisenhauer, Phillipe, Bailey, Grady, IOS, Bahamas Commonwealth Bank, International Bancorp, Value Capital, Kilmorey Investments, Butlers Bank, Bank Cantrade, Fairfield General, Fairfield Aviation and Skyways and by other persons and entities. The following participants in the aforesaid scheme, acts and practices will be referred to as "defendant Vesco and his group": defendants Vesco, LeBlanc, Meissner, Strickler, Graze, Beatty, Clay, Straub, Weymar, Snipes, Dodd, Grady and Bailey.

8. The aim and object of the aforesaid scheme was for defendant Vesco and his group, by using the assets of plaintiff ICC and its subsidiaries, to obtain and arrogate to themselves control of IOS and its assets and of other assets of ICC, outside of ICC and at ICC's expense. As part of and in connection with the scheme, Vesco and his group caused ICC and its subsidiaries to purchase IOS securities and properties and to sell the IOS securities and properties to entities controlled by defendant Vesco and his group.

9. In furtherance of the scheme, defendant Vesco and his group caused ICC and its subsidiaries to engage in a series of transactions by which Vesco and his group gained control of IOS.

On or about September 4, 1970, defendant Vesco and his group caused ICC Investments Ltd. ("IIL"), a subsidiary of ICC, to enter into a loan agreement with IOS pursuant to which IIL advanced $5,000,000 to IOS and received in exchange a note of IOS payable on May 24, 1971, together with warrants to purchase three million shares of IOS common stock. Thereafter, Vesco and his group caused the loan agreement to be amended, and thereafter caused the liability created by the agreement as amended to be settled by the payment to IIL of $5,500,000, the repurchase of the warrants of IOS for $350,000, and the delivery to IIL of 6,000,000 shares of IOS common stock.

10. In connection with the purchase by IIL of the IOS stock, defendant Vesco and his group failed to disclose to ICC, the other members of its board of directors and its public shareholders that the transactions were designed to enable defendant Vesco and his group to carry out their scheme to acquire the IOS stock and assets for themselves, and that defendant Vesco and his group intended to have IIL hold the stock at their disposal and for their benefit, until they could acquire it for themselves and intended to turn the IOS assets to their own private purposes to the loss and detriment of ICC and its public shareholders and of IOS and its affiliates and public shareholders.

11. In furtherance of the aforesaid scheme, and simultaneously with the transactions described in the preceding paragraph hereof, defendant Vesco and his group caused ICC, through its wholly-owned subsidiary American Interland Inc. to purchase, for a price which was $3,500,000 above the market price, a large block of IOS preferred stock.

12. In connection with the acquisition of the IOS preferred stock, defendants Vesco and his group failed to disclose

to ICC, the other members of its Board of Directors and its public shareholders that the purchase was designed to enable defendants to carry out their scheme to acquire the IOS stock and assets and the control thereof for themselves, and that defendant Vesco and his group intended to have American Interland, Inc. hold the stock at their disposal and for their private benefit until they could acquire it for themselves. In addition, defendant Vesco and his group failed to disclose that defendant Butlers Bank was aiding defendant Vesco in the scheme in return for various improper benefits which would be paid or given to defendant Butlers Bank and its managing director, defendant Weymar.

13. In furtherance of and as part of his scheme, Vesco and his group caused International Bancorp to sell to defendant Weymar 30% of its stock in exchange for all of the stock of Bahamas Commonwealth Bank and caused International Bancorp to distribute the remainder of its stock to IOS stockholders.

14. International Bancorp was a holding company which was a 70% subsidiary of IOS and which had a shareholders' equity in excess of $17,400,000.

15. In connection with the transactions by which defendant Weymar acquired 30% of the stock of International Bancorp, defendant Vesco and his group failed to disclose to ICC, the independent members of ICC's Board of Directors and the public stockholders of ICC that defendant Weymar was acting in concert with defendant Vesco and that the sale to defendant Weymar was part of the scheme by which defendant Vesco and his group intended to acquire IOS assets. In addition, in connection with the sale, defendant Vesco and his group failed to disclose that defendants Butlers Bank and Weymar were paid substantial premiums at the ex-

pense of IOS shareholders including ICC, and that the assets which Bahamas Commonwealth Bank owned when it was acquired by International Bancorp had been sold to it by Butlers Bank shortly before at grossly inflated prices far in excess of their actual value and at a profit to Butlers Bank.

16. As part of and as a further step in the scheme, in or about December 1971, defendant Vesco and his group caused IOS to transfer certain assets to Value Capital in exchange for shares of stock in Value Capital which were later distributed to IOS shareholders, including ICC.

17. As part of and as a further step in the scheme, defendant Vesco and his group caused ICC to transfer all of its interests in IOS and former IOS properties, including its stock in Value Capital, to newly formed companies purportedly unrelated to Vesco, but, in reality, under the control of defendant Vesco and his group. Viz:

(a) On or about March 30, 1972, Vesco and his group caused ICC to sell its subsidiaries which held IOS stock to Kilmorey Investments, a shell corporation, for a total consideration valued by defendant Vesco and his group at $2,240,000. Only $200,000 was paid in cash. A large part of the remaining consideration, valued at $1,740,000 was based upon a contingent obligation of the subsidiaries acquired by Kilmorey Investments from ICC to indemnify ICC against tax liabilities arising out of ICC's investments related to IOS. The consideration was illusory because such an obligation was likely never to arise and, in fact, never has.

(b) In connection with the sale of these ICC subsidiaries to Kilmorey, defendants failed to disclose to ICC and its public stockholders that the sale was part of and in further-

ance of defendant Vesco's scheme to obtain control of IOS, that Kilmorey, while purportedly owned by others, was, in reality, controlled and dominated by Vesco, that the consideration paid by Kilmorey was illusory and that IOS possessed substantial hidden assets, including the net asset value of shares in IOS funds which the purchasers would not or could not redeem and that Vesco and his group planned to loot IOS and its affiliates to the loss and detriment of ICC and its public shareholders and of IOS and its affiliates and public shareholders.

(c) On or about June 3, 1972, defendant Vesco caused ICC to divest itself of all of its stock in International Bancorp and Value Capital (which had been spun-off by IOS) by selling it, together with four notes in the approximate total amount of $1,872,505 to Global Financial for $7,350,000 in five-year notes which carried five percent interest, plus Global Financial's assumption of the contingent tax indemnification agreement referred to above in subparagraph (a) of this paragraph.

(d) In connection with the sale to Global Financial, defendants failed to disclose to ICC, the independent members of its Board of Directors and its public stockholders that the sale was part of and in furtherance of defendant Vesco's scheme to obtain control of IOS, that Global Financial had been purchased by Global Holdings, all or whose stock was, upon information and belief, owned by defendant LeBlanc, as a shell from International Bancorp, and that while Global Financial was purportedly owned by LeBlanc, it was, in reality, controlled and dominated by Vesco.

18. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

SECOND COUNT

19. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" inclusive hereof as though fully set forth herein.

20. In November 1970 ICC purported to declare a dividend in kind of all of the outstanding shares of Fairfield Aviation. Purportedly to provide a holding company structure for the resulting public company, ICC organized Fairfield General and on December 9, 1971, transferred all of the outstanding shares of Fairfield Aviation to Fairfield General, and thereupon purported to modify the dividend in kind to provide that it would consist of all of the outstanding shares of Fairfield General owned by ICC.

21. The purported dividend in kind was declared in furtherance of defendant Vesco's scheme to obtain control of IOS and its assets and of other assets of ICC, independent of ICC and at ICC's expense. In particular, defendant Vesco and his group agreed that they would increase the value of the companies to be spun off by the dividend in kind and thereby use the proposed dividend in kind as a vehicle by which Vesco and his group would acquire for their own personal use and for the use of IOS various assets of ICC, which would ultimately include a Boeing 707 airplane, to be lavishly renovated according to defendant Vesco's specifications, and to be paid for, operated and maintained at the expense of ICC and its public shareholders.

22. In furtherance of and as part of the aforesaid scheme, sometime after the formation of Skyways, which was incorporated on December 23, 1970, Vesco and his group caused ICC to contribute to Skyways "as of September 30, 1970" aircraft having an aggregate market value of $363,000 (before assumed debt of

approximately $183,000).

23. In furtherance of and as part of the aforesaid scheme, on June 15, 1971, defendant Vesco caused defendant Skyways to purchase a Boeing 707 airplane from Pan American Airways for $1,375,000, of which $343,750 was paid with funds contributed to Skyways by ICC. As security, Skyways granted to Pan American a first mortgage on the Boeing 707.

24. In furtherance of and as part of the aforesaid scheme, defendant Vesco caused ICC to lease the Boeing 707 from Skyways for the three months ended September 30, 1971 at a total cost to ICC of $439,000. In addition, defendant Vesco caused defendant Beatty to execute a lease with Skyways pursuant to which ICC purportedly leased the Boeing 707 for a period of five years at a monthly rental of $100,000 for each of the months of October, November and December 1971; $83,000 per month for each of the months January through December 1972; and $47,000 per month for each of the months January 1973 through September 1976 or for a total rental from July 1971 to September 1976 of more than $3,500,000.

25. In connection with the dividend in kind, Fairfield General filed a registration statement with the Securities and Exchange Commission on Form S-1 and distributed a prospectus to the stockholders of ICC which was materially false and misleading. The registration statement was signed by defendants Vesco, Dodd, Beatty and Clay.

26. In connection with the distribution of the dividend in kind, defendant Vesco and his group, and the registration statement and prospectus referred to in paragraph "25" above, failed to disclose to ICC, its Board of Directors and its stockholders:

(a) that the full terms of the lease had never been disclosed to the ICC Board of Directors;

(b) that the lease was inequitable and unfavorable to ICC, because, among other reasons, it provided for termination at Skyways' option, in the event of sale or transfer of ownership of the airplane, on five days' prior written notice to ICC;

(c) that the lease was inequitable and unfavorable to ICC because, among other reasons, it provided that any improvements made by ICC belonged to Skyways upon termination of the lease;

(d) that the payment schedule under the lease was designed and constructed by defendants Vesco and his group without relation to the actual value of the services to be provided to ICC under the lease but solely to enable Skyways to amortize, through payments by ICC, the cost to Skyways of the Boeing 707 plus a proposed $350,000 modification (which ultimately cost over $600,000) of the interior of the aircraft desired by Vesco. Thus, rental payments were extremely high during the first few months of the lease term and decreased to $47,000 per month starting in January 1972. The basic $47,000 per month payment had been computed in order to provide Skyways with the amount required for debt service, aircraft liability insurance and a ten-percent profit margin to Skyways.

(e) that a $200,000 note given to ICC by Skyways in return for advances made by ICC was subordinate to all other obligations of Skyways and that Skyways did not have sufficient income to enable it to pay the note when due;

(f) that the lease was merely a device by which Vesco would force ICC to pay for an airplane and its operation and maintenance for his personal use although the airplane was not necessary to ICC's or its subsidiaries', including Skyways', business and, indeed, was not intended to be used in such business;

(g) that the renovations which defendant Vesco and his group planned for the interior of the airplane included such features as a discotheque area with a wooden dance floor, a bar and "entertainment center" (including a stereo receiver, tape decks, rhythmic lighting, movie screen and projector and wine rack), a master bedroom, a guest bedroom and a sauna and soaking bath and shower facility.

(h) that the planned renovations would render the airplane commercially useless;

(i) that Fairfield General and its subsidiaries were not independently viable business entities, but were mere vehicles, whose principal business was to be the ownership and operation of the Boeing 707;

(j) that the dividend in kind was never properly and validly declared by ICC's Board of Directors;

(k) that the reason for the dividend was not, as claimed in the prospectus, the reorganization of ICC, but to enable Vesco and his group to exercise greater domination and control over Fairfield General and its subsidiaries than they were able to exercise through ICC;

(l) that the dividend would be of no substantial benefit to the public shareholders of ICC.

27. Defendant Vesco and his group deceived ICC, the independent members of its Board of Directors and its public stockholders into continuing its payments under the lease, and into giving up direct control over the leasing company by distributing the stock of Fairfield General (a) by falsely representing to ICC that the use of the Boeing 707 would not cost ICC any money since it was being used solely for defendant Vesco's activities on behalf of non-ICC entities and that ICC would be reimbursed by such entities for the use of the airplane, and (b) by falsely

representing, at the stockholders' meeting in July 1972, that ICC had not spent a single dollar in 1971 for the cost of the airplane that was not being reimbursed. By late 1972, while ICC expenses in connection with the aircraft amounted to more than $1,500,000, it had been reimbursed less than 25% of that amount. After complaints by ICC's directors with respect to the failure of ICC to obtain reimbursement for these expenses, defendant Vesco claimed that, contrary to earlier representations, a considerable number of his flights were in connection with ICC business and that ICC was not entitled to reimbursement for these, and defendant Vesco has repeatedly refused to obtain reimbursement from IOS and related entities for the use of the aircraft.

28. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

THIRD COUNT

29. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "21" and "23" through "27" inclusive above as though fully set forth herein.

30. By reason of the foregoing, defendant Vesco and his group engaged in self-dealing and has used the assets of ICC for their own personal aggrandizement and benefit contrary to and in breach of their fiduciary duties as directors and/or officers of ICC, and ICC has sustained damages in an amount which cannot precisely be ascertained except by an accounting, and is entitled to punitive and exemplary damages.

FOURTH COUNT

31. Plaintiff repeats and realleges each and every

allegation contained in paragraphs "1" through "21" and "23" through "27" above inclusive as though fully set forth herein.

32. The acquisition and sale of the stock and assets of IOS and the lease of the Boeing 707 aircraft and the contributions made to Skyways and Fairfield General by ICC were not necessary or proper to ICC's business and fulfilled no proper corporate purpose. The IOS transactions and the contributions to Fairfield General and Skyways and the lease of the aircraft and the payments made thereunder by ICC, at defendant Vesco's direction, constituted a waste and diversion of corporate assets.

33. By reason of the foregoing, ICC has sustained damages in an amount which cannot be aserttained except by an accounting.

FIFTH COUNT

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "5" and "23" through "27" above inclusive as though fully set forth herein.

35. In early January of 1973, ICC instructed defendant Eisenhauer to ground the Boeing 707 and not to incur any further expenses in connection with the aircraft unless in connection with activities specifically authorized in advance by ICC. ICC also instructed defendant Eisenhauer to reduce the size of his staff to the minimum number permitted by applicable regulations. Defendant Eisenhauer failed and refused to follow ICC's instructions.

36. In connection with negotiations between ICC, Fairfield and Skyways for consent to fly the Boeing 707 to Beirut for the purpose of demonstrating the 707 to a potential purchaser, ICC

entered into an agreement with defendant Eisenhauer pursuant to which Eisenhauer, in consideration for payment of $16,000 termination pay, agreed to fly the airplane in demonstration flights for purposes of sale. ICC instructed defendant Eisenhauer to fly the Boeing 707 from Texas to Newark, New Jersey.

37. In violation of his instructions, defendant Eisenhauer flew the Boeing 707 to Nassau, where he picked up defendants Vesco, Beatty and others and flew them to Beirut and back to Nassau where the Boeing 707 is being wrongfully held by defendants Skyways, Vesco and his group.

38. By reason of the foregoing, ICC is being deprived of the use of the Boeing 707 which it has leased from defendant Skyways, and the Boeing 707 is being and has been converted by defendants Vesco, Eisenhauer and Skyways to their own use.

SIXTH COUNT

39. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "5" and "23" through "27" above as though fully set forth herein.

40. The lease between ICC and defendant Skyways was unfair and harmful to plaintiff ICC, its approval by the ICC Board of Directors or by the ICC stockholders was fraudulently obtained, it was entered into solely at the direction of Vesco and his group and was maintained and continued upon the basis of misrepresentations to ICC made by defendant Vesco.

41. By reason of the foregoing, the lease between Skyways and ICC is null, void, and of no further effect, and ICC is entitled to recover from Skyways all payments heretofore made by ICC pursuant to the lease.

SEVENTH COUNT

42. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "5" and "21" through "23" above as though fully set forth herein.

43. In or about November 1972, as a result of the wrongful actions of defendant Vesco and his group, the Securities and Exchange Commission commenced an action in this Court against ICC and some of the defendants in this action alleging numerous violations of the securities laws and seeking an accounting. In connection with that action an injunction was obtained prohibiting ICC from, among other things, making payments under the lease with defendant Skyways.

44. Defendant Skyways, at the direction of defendant Vesco and his group, nevertheless, and in order to perfect their scheme to obtain possession of the Boeing 707 purported to terminate the lease and instructed defendant Eisenhauer to fly the plane to Nassau, Bahamas, and Beirut, Lebanon. Defendant Eisenhauer, knowing that the plane was under lease to ICC, and having been instructed by ICC to fly the plane to Newark, New Jersey, nevertheless wrongfully flew the plane to Nassau and Beirut.

45. By reason of the foregoing, defendant Skyways has breached the lease and deprived plaintiff of the use of the Boeing 707.

EIGHTH COUNT

46. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "21" and "23" through "27" hereof as though fully set forth herein.

47. In connection with defendant Vesco and his group's wrongful scheme to convert the assets of ICC to his own use and benefit he incurred for and on behalf of ICC, and caused ICC to pay numerous legal fees which were in fact for defendant Vesco's own personal business; and to reimburse legal expenses that were not properly reimbursed.

48. In addition, defendant Vesco caused ICC to become a defendant in the action brought by the Securities and Exchange Commission, and in other legal actions resulting in waste of ICC's assets.

49. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

NINTH COUNT

50. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "21" and "23" through "27" hereof as though fully set forth herein.

51. In connection with the scheme described above, defendant Vesco and his group caused ICC to pay various improper fees, emoluments and other benefits to various defendants, including defendants, Sears, Buhl and Clay, and to other persons.

52. Such payments served no proper corporate purpose, were excessive in amount, and constituted corporate waste.

53. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

TENTH COUNT

54. Plaintiff repeats and realleges each and every

allegation contained in paragraphs "1" through "54" above as though fully set forth herein.

55. Defendant Vesco caused ICC Investments Limited ("IIL"), a subsidiary of ICC, to enter into an agreement with defendant IOS dated January 25, 1971 entitled "Second Amendment to Purchase Agreement" pursuant to which, inter alia, IOS agreed to reimburse IIL, ICC, or their respective employees for all travel expenses and other out-of-pocket expenses incurred in connection with matters pertaining to the business of defendant IOS and its subsidiaries.

56. Defendant Vesco caused ICC to enter into an agreement dated April 1, 1972 with defendant IOS, pursuant to which ICC agreed to make defendant Vesco available to defendant IOS as a consultant. Such agreement requires defendant IOS (i) to reimburse ICC for travel expenses incurred by ICC or defendant Vesco in the performance of consulting services to defendant IOS, including expenses for transportation by private aircraft, office facilities, entertainment and lodging, and (ii) to indemnify defendant Vesco, ICC and each of ICC's directors, officers, employees and agents against any losses, claims, damages, fines, expenses or liabilities arising out of or based upon any act or failure to act by the indemnified party directly or indirectly involving or relating to the services of defendant Vesco as a consultant to defendant IOS.

57. Defendant Vesco caused ICC to enter into an agreement dated April 1, 1972 with defendant Kilmorey Investments, pursuant to which ICC agreed to make defendant Vesco available to defendant Kilmorey Investments as a consultant. Such agreement requires defendant Kilmorey Investments (i) to reimburse ICC for travel expenses incurred by ICC or defendant Vesco in the perform-

ance of consulting services to defendant Kilmorey Investments, including expenses for transportation by private aircraft, office facilities, entertainment and lodging, and (ii) to indemnify defendant Vesco, ICC and each of ICC's directors, officers, employees and agents against any losses, claims, damages, fines, expenses or liabilities arising out of or based upon any act or failure to act by the indemnified party directly or indirectly involving or relating to the services of defendant Vesco as a consultant to defendant Kilmorey Investments.

58. Defendant Vesco caused ICC to enter into an agreement with defendants Global Financial and Global Holdings dated June 3, 1972, pursuant to which ICC sold to defendant Global Financial, among other things, shares owned by ICC in defendants International Bancorp and Value Capital and agreed to make available to International Bancorp and Value Capital personnel of ICC. Such agreement requires defendants Global Holdings and Global Financial (i) to reimburse ICC for expenses incurred by ICC personnel in the performance of consulting services to defendants International Bancorp and Value Capital, including expenses for transportation by private aircraft, office facilities, entertainment and lodging, and (ii) to indemnify and hold harmless ICC and ICC's personnel against any losses, claims, damages, fines, expenses or liabilities arising out of or based upon any act or failure to act by the indemnified party directly or indirectly involving or relating to the services of ICC personnel as consultants to defendants International Bancorp and Value Capital or their subsidiaries.

59. ICC has incurred reimbursable expenses for the year 1972 in connection with the agreements referred to in paragraphs "55" through "58" above in the aggregate amount of $3,109,341.

Of such amount, an aggregate of $1,252,484 was paid to ICC either by or for the a count of defendants IOS, Kilmorey Investments, Global Holdings and Global Financial; and $500,000 was, according to an advice of credit from the defendant Bahamas Commonwealth Bank, deposited to the account of ICC, but was blocked for reasons unknown. Accordingly, there remains a balance of $500,000 being wrongfully withheld from ICC and $1,856,857 (including said $500,000) due and owing to ICC.

60. Defendant Bahamas Commonwealth Bank has failed and refused to pay the amount wrongfully withheld and defendants IOS, Kilmorey Investments, Global Holdings and Global Financial have failed and refused to pay the balance due and owing to ICC although payment has been duly demanded.

61. By reason of the foregoing, plaintiff has sustained damages in the amount of $1,856,857,plus interest.

ELEVENTH COUNT

62. Plaintiff repeats and realleges each and every allegation made in paragraphs "1" through "21" and "23" through "27" hereof as though fully set forth herein.

63. In selecting defendant Marine Midland as the transfer and paying agent for the dividend in kind described in paragraphs "5(bb)" and "20" hereof, plaintiff relied on Marine Midland's reputation and ability to fultill the duties of transfer and paying agent with the care and skill appropriate to that office.

64. In paying the dividend in kind, Marine Midland failed to act with the customary care and skill appropriate to a

transfer and paying agent and, indeed, was grossly negligent in that Marine Midland failed to obtain proper corporate authorization from ICC to pay such dividend, and paid such dividend even though it knew or should have known that the purported dividend had never been validly authorized and could not properly be paid.

65. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

WHEREFORE, plaintiff demands judgment as follows:

(a) on the first, second, third, fourth, sixth, eighth, ninth and eleventh counts, directing that the defendants account to plaintiff for all damages sustained by virtue of the acts of defendants as set forth therein;

(b) on the fifth and seventh counts, judgment declaring that:

(1) the lease between ICC and Skyways entered into on or about June 15, 1971 be declared void;

(2) that the dividend consisting of shares of Fairfield General Corporation distributed to the shareholders of ICC be declared null and void;

(3) that the Boeing 707 aircraft belongs to ICC, subject to any outstanding indebtedness to Pan American Airways Inc.; and

(4) directing that defendants forthwith deliver the Boeing 707 to plaintiff;

(c) on the tenth count, damages in the amount of $1,856,857, together with interest thereon; and

(d) enjoining defendants, pendente lite, and permanently, from using the assets of plaintiff ICC or its subsidiaries for their own purposes to the loss and detriment of ICC and its shareholders;

together with such other and further relief as to this Court shall seem just and proper, together with interest and the costs and disbursements of this action.

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New York, New York
661-3200

Attorneys for plaintiff

INDEX NO. 78 Civ 2[illegible]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, ET AL.

Defendants.

COMPLAINT

SHEA GOULD CLIMENKO & KRAMER

330 MADISON AVENUE

NEW YORK, N. Y. 10017

MO 1-3200

AND

ATTORNEYS FOR
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230 Park Avenue
New York, New York 10017
725-5360

INDEX NO. 73 Civ. 2518

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORPORATION,

Plaintiff

against

ROBERT L. VESCO, et al.,

Defendants

SUMMONS & COMPLAINT

SHEA GOULD CLIMENKO & KRAMER

330 MADISON AVENUE

NEW YORK, N. Y. 10017

MO 1-3200

ATTORNEYS FOR Plaintiff

Order to Show Cause and Temporary Restraining Order dated June 8, 1973.

(52a - 59a)

Order to Show Cause 53a
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff

-against-

ROBERT L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, NORMAN LeBLANC, STANLEY GRAZE, MILTON F. MEISSNER, ULRICH J. STRICKLER, RICHARD E. CLAY, WILBERT J. SNIPES, FREDERIC J. WEYMAR, GILBERT R. J. STRAUB, C. HENRY BUHL III, RALPH P. DODD, ALWYN EISENHAUER, GEORGE PHILLIPE, JOEL GRADY, SHIRLEY BAILEY, VESCO & CO., I.O.S. LTD., BAHAMAS COMMONWEALTH BANK, INTERNATIONAL BANCORP, KILMOREY INVESTMENTS LTD., VALUE CAPITAL LTD., GLOBAL HOLDINGS LTD., GLOBAL FINANCIAL LTD., BUTLERS BANK LTD. (now known as WHO Holdings Ltd.), ALLAN J. BUTLER, BANK CANTRADE LTD., FAIRFIELD AVIATION CORPORATION, FAIRFIELD GENERAL CORPORATION, SKYWAYS LEASING CORPORATION and MARINE MIDLAND BANK,

Defendants.

INDEX # 73 CIV 2518 (CES)

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Upon the application of the plaintiff, the annexed affidavits of David M. Butowsky, Laurence Richardson, Jr., Malcolm McAlpin, sworn to on June 7, 1973, and of Allen Shinn sworn to on June 6, 1973, and upon the annexed summons and complaint herein, it is

ORDERED that the defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation show cause before Hon. Charles Stewart, United States District Judge, at Room 2602, United States Courthouse, Foley Square, New York, New York, on the 13th day of June, 1973 at 2:30 P.M. of that day or as soon thereafter as counsel can be heard, why an order should not be made herein:

1. Pursuant to 28 U.S.C. §2283 enjoining, pendente lite,

defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation, their directors, officers, agents, servants, employees and attorneys and those acting in concert with them, from prosecuting or taking any steps in furtherance of (i) an action entitled "Fairfield General Corporation, a New Jersey corporation, Fairfield Aviation Corporation, a New Jersey corporation, and Skyways Leasing Corporation, a New Jersey corporation, plaintiffs v. International Controls Corporation, a corporation of the State of Florida, defendant" pending in the Superior Court of New Jersey Chancery Division, Essex County, and (ii) an action entitled "Skyways Leasing Corporation, a New Jersey corporation v. International Controls Corporation, a Florida corporation", Docket No. L-28210-73, pending in the Superior Court of New Jersey, Law Division, Essex County, pending final determination of International Controls Corp. v. Robert L. Vesco et al; and

2. Enjoining, pendente lite, defendants Robert L. Vesco, Vesco & Co., Skyways Leasing Corporation, Fairfield General Corporation, Fairfield Aviation Corporation, Frank G. Beatty, Joel Grady and Alwyn Eisenhauer from, directly or indirectly, using, selling, encumbering or otherwise disposing of the following properties without the approval of the Court:

(i) 846,380 shares of common stock of International Controls Corp. held of record by

defendant Vesco & Co.;

(ii) 122,463 shares of common stock of International Controls Corp. held of record by defendant Robert L. Vesco;

(iii) common stock of defendant Fairfield General Corporation owned or controlled by defendants Robert L. Vesco and Vesco & Co.;

(iv) capital stock of defendant Fairfield Aviation Corporation, a wholly-owned subsidiary of defendant Fairfield General Corporation;

(v) capital stock of defendant Skyways Leasing Corporation, a wholly-owned subsidiary of defendant Fairfield Aviation Corporation;

(vi) a Boeing 707 (registered number N11RV) title to which is in defendant Skyways Leasing Corporation, or the proceeds of the sale of the Boeing 707 if it has already been sold, or any other moneys or assets of defendants Fairfield General Corporation, Fairfield Aviation Corporation or Skyways Leasing Corporation; and

(vii) any and all other assets or property of such companies.

AND, it clearly appearing to this Court that the aforesaid defendants, their directors, officers, agents, servants, employees and attorneys are able to commit the acts hereafter specified, that they will do so without restraint of an order of this Court, that immediate and irreparable injury will result to plaintiff and that such actions will interfere with the Final Judgment of Permanent Injunction and Appointment of Special Counsel and Directors (International Controls Corp.) entered by

this Court in Securities and Exchange Commission v. Robert L. Vesco et al (72 Civ. 5001), on March 16, 1973, it is

ORDERED that, pursuant to 28 U.S.C. §2283 and Fed. R. Civ. P., Rule 65, pending determination of plaintiff's application for a preliminary injunction, defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation, their officers, agents, servants, employees and attorneys be, and they hereby are, restrained from prosecuting or taking any steps in furtherance of (i) an action entitled "Fairfield General Corporation, a New Jersey corporation, Fairfield Aviation Corporation, a New Jersey corporation, and Skyways Leasing Corporation, a New Jersey corporation, plaintiffs v. International Controls Corporation, a corporation of the State of Florida, defendant" pending in the Superior Court of New Jersey Chancery Division, Essex County, and (ii) an action entitled "Skyways Leasing Corporation, a New Jersey corporation v. International Controls Corporation, a Florida corporation", Docket No. L-28210-73, pending in the Superior Court of New Jersey, Law Division, Essex County, pending final determination of International Controls Corp. v. Robert L. Vesco et al; and it is further

ORDERED that, pursuant to Fed. R. Civ. P., Rule 65, pending determination of plaintiff's application for a preliminary injunction, defendants Robert L. Vesco, Vesco & Co., Skyways Leasing Corporation, Fairfield General Corporation, Fairfield Aviation Corporation, Frank G. Beatty, Joel Crady and Alwyn Eisenhauer, their officers, agents, servants, employees and attorneys be, and they hereby are, restrained from, directly or indirectly, using, selling, encumbering or otherwise disposing of the following properties without the approval of the Court:

(i) 846,380 shares of common stock of International

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - x

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against- 73 Civ. 2518

ROBERT L. VESCO, et al.

- - - - - - - - - - - - - - - - - - - x

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, (1) that the Boeing 707 may be sold pursuant to the purchase agreement presently in effect between Skyways Leasing Corp. and an undisclosed purchaser which provides for a closing on or before June 17, 1973 and (2) that the net proceeds of any such sale will be invested in bank certificates of deposit or deposited in interest bearing bank accounts by Skyways Leasing Corp. and may not otherwise be used pending further order of this Court.

Controls Corp. held of record by defendant Vesco & Co.;

(ii) 122,463 shares of common stock of International Controls Corp. held of record by defendant Robert L. Vesco;

(iii) common stock of defendant Fairfield General Corporation owned or controlled by defendants Robert L. Vesco and Vesco & Co.;

(iv) capital stock of defendant Fairfield Aviation Corporation, a wholly-owned subsidiary of defendant Fairfield General Corporation;

(v) capital stock of defendant Skyways Leasing Corporation, a wholly-owned subsidiary of defendant Fairfield Aviation Corporation;

(vi) a Boeing 707 (registered number N11RV) title to which is in defendant Skyways Leasing Corporation, or the proceeds of the sale of the Boeing 707 if it has already been sold, ~~or any other~~ except moneys or assets of defendants Fairfield General Corporation, Fairfield Aviation Corporation or Skyways Leasing Corporation; and

(vii) any and all other assets or property of such companies;

and it is further

ORDERED that this order shall expire within ten (10) days after entry unless, within such time, this order, for good cause shown, is extended, or unless the aforesaid defendants consent that it be extended for a longer time; and it is further

ORDERED that service of a copy of this order, and ~~the~~ the papers in support thereof affidavits, summons and complaint upon which the same is based

by an employee of attorneys for plaintiff personally (1) upon defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation by service upon their attorneys in the aforesaid actions pending in New Jersey on or before June 8th, 1973 at 5 PM; (2) upon defendants Robert L. Vesco and Frank G. Beatty by service upon their attorneys of record in Securities and Exchange Commission v. Robert L. Vesco et al (72 Civ. 5001) pending in this Court; and (3) upon defendants Vesco & Co., Joel Grady and Alwyn Eisenhauer on or before June , 1973, at M; shall be good and sufficient.

DATED: New York, New York
June 8th, 1973
Issued at 2:45 PM

/s/ Charles E. Stewart Jr.
U.S.D.J.

Affidavit of David M. Butowsky, sworn to June 7, 1973 and exhibits annexed thereto, in support of application to enjoin and restrain prosecution of New Jersey lawsuits.

(60a - 115a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, NORMAN LeBLANC, STANLEY GRAZE, MILTON F. NEISSNER, ULRICH J. STRICKLER, RICHARD E. CLAY, WILBERT J. SNIPES, FREDERIC J. WEYMAR, GILBERT R. J. STRAUB, C. HENRY BUHL III, RALPH P. DODD, ALWYN EISENHAUER, GEORGE PHILLIPE, JOEL GRADY, SHIRLEY BAILEY, VESCO & CO., IOS LTD., BAHAMAS COMMONWEALTH BANK, INTERNATIONAL BANCORP, KILMOREY INVESTMENTS LTD., VALUE CAPITAL LTD., GLOBAL HOLDINGS LTD., GLOBAL FINANCIAL LTD., BUTLERS BANK, LTD., BANK CANTRADE LTD., FAIRFIELD AVIATION CORPORATION, FAIRFIELD GENERAL CORPORATION, SKYWAYS LEASING CORPORATION and MARINE MIDLAND BANK,

Defendants.

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AFFIDAVIT OF DAVID M. BUTOWSKY IN SUPPORT OF APPLICATION TO ENJOIN AND RESTRAIN PROSECUTION OF NEW JERSEY ACTIONS

- -x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID M. BUTOWSKY, being duly sworn deposes and says:

1. I am the Court-appointed Special Counsel of International Controls Corp. ("ICC"). I was appointed by Honorable Charles E. Stewart, Jr., Judge of the United States District Court, Southern District of New York, by Order dated March 25, 1973. By that Order, Judge Stewart also appointed five new directors of ICC to replace the previous Board of Directors. These appointments were pursuant to a Final Judgment of Permanent Injunction and Appointment of Special Counsel and Directors entered

on March 16, 1973 by Judge Stewart, which in turn was entered pursuant to a Consent executed by ICC and the Securities and Exchange Commission to an action entitled Securities and Exchan Commission, Plaintiff v. Robert L. Vesco, et al., Defendants (7 Civ. 5001 [C.E.S.]) pending in that Court, wherein the Securiti and Exchange Commission had made application for the appointmen of an Equity Receiver of ICC.

2. This affidavit is made in support of ICC's motion restrain and enjoin all proceedings against ICC in the actions entitled (1) "Fairfield General Corporation, a New Jersey corpo ation, Fairfield Aviation Corporation, a New Jersey corporation and Skyways Leasing Corporation, a New Jersey corporation, pla tiffs v. International Controls Corp., a corporation of the St of Florida, defendant" pending in the Superior Court of New Je Chancery Division, Essex County (hereinafter the "Fairfield action"); and (2) "Skyways Leasing Corporation, a New Jersey corporation v. International Controls Corp., a Florida corpora Docket No. L-28210-72, pending in the Superior Court of New Je Law Division, Essex County (hereinafter the "Skyways action"). Unless the Fairfield action and the Skyways action are enjoine my ability and that of the Board of Directors of ICC to carry the duties and responsibilities set forth in the Final Judgmen of Permanent Injunction and Appointment of Special Counsel an Directors (International Controls Corp.) will be seriously impaired and irreparable injury to ICC will result, all as mo fully described below.

3. My duties as Special Counsel include the obliga to conduct a full investigation and arrange for and oversee a

accounting into the financial and other affairs of ICC; to take all appropriate action, including, but not limited to, the institution and prosecution of suits on behalf of ICC; to recover all assets or monies improperly used, taken, wasted, misappropriated, dispensed, obligated or paid to anyone; to refrain from settling any claims of ICC against the recommendation of the Securities and Exchange Commission and without the approval of the Court; to take immediate, necessary and appropriate action to protect ICC's claims, interests and rights; and to pursue all possible claims against defendants in the SEC action or any other persons including, but not limited to the commencement of legal proceedings to prevent the dissipation of flight of any funds or other assets, the placing of a stop transfer order on securities beneficially owned or controlled by said defendants and/or the institution of appropriate action to freeze and preserve the assets of said defendants or others who may be obligated to International Controls; and to take such further action, subject to the approval of the United States District Court for the Southern District of New York, as may be necessary or appropriate for the protection of the shareholders of ICC.

4. As can be seen from the complaint and accompanying affidavits in this matter, Special Counsel and the Board of Directors of ICC have concluded that Fairfield General Corporation, Fairfield Aviation and Skyways Leasing Corp., together with Mr. Vesco and others referred to in the complaint have engaged in a scheme to defraud ICC and its public shareholders which scheme commenced in or about November, 1970. In furtherance of that scheme, among other things (i) defendant Fairfield General Corporation was organized, (ii) shares of Fairfield Aviation held

by ICC were transferred to Fairfield General Corporation, (iii) ICC declared a dividend of the shares of Fairfield General Corporation to the shareholders of ICC, (iv) Skyways Leasing Corp. was incorporated as a wholly owned subsidiary of the defendant Fairfield Aviation, (v) Skyways Leasing Corp. purchased a Boeing 707 jet aircraft in or about June 15, 1971, (vi) ICC leased the said aircraft from Skyways Leasing Corp., (vii) a misleading prospectus was prepared by Fairfield General Corporation and distributed to the shareholders of ICC together with the aforesaid dividend of shares of Fairfield General Corporation; and (viii) ICC made numerous payments to Skyways Leasing Corp. under the aforesaid lease. The aforesaid acts, practices and course of conduct comprised a scheme to defraud ICC and its public stockholders and to appropriate or convert the monies and properties of ICC to the benefit of the defendants, and as is shown by the accompanying affidavits of Allen M. Shinn, Laurence Richardson and Malcolm McAlpin.

5. Annexed hereto and marked "Exhibit A" and "Exhibit B" are the complaints filed in the Skyways action and the Fairfield action referred to above. The Fairfield action was commenced on or about May 25, 1973 and the Skyways action was commenced on or about June 5, 1973. As appears from the complaint in the Skyways action, Skyways is attempting to enforce the very lease which ICC contends was obtained by fraud and deceit. As appears from the complaint in the Fairfield action, the plaintiff therein is seeking to enforce a management services agreement and an air taxi services contract with ICC. Obviously, if as alleged in the ICC complaint, the incorporation of Fairfield General Corporation and the dividend which followed such incorporation were essential parts of the scheme to defraud ICC, Fairfield General

Corporation may not be permitted to enforce these agreements. Moreover, both the lease which Skyways seeks to enforce and the agreements underlying the Fairfield action were purportedly "approved and ratified" by the ICC board of directors at its meeting on December 8, 1971. Upon information and belief, the lease and the agreements were not "approved and ratified" nor considered at such meeting.

6. In brief, a stay of the proceedings in the New Jersey courts is necessary to protect and effectuate the Judgment of this Court in Securities and Exchange Commission v. Robert L. Vesco, et al., (72 Civ. 5001). As shown by the accompanying affidavits of Messrs. Shinn, Richardson and McAlpin, the two New Jersey actions are merely the latest steps by defendants Vesco and his group to secure additional fruits from the wrongful scheme set forth at length in the complaint herein. By its Final Judgment in Securities and Exchange Commission v. Robert L. Vesco, et al., and the subsequent appointment of myself as Special Counsel and a new Board of Directors, this Court acquired jurisdiction over all of the assets of ICC so that such assets could be protected. For that reason, this Court decreed that it would "retain jurisdiction . . . for the purpose of enforcing" the Final Judgment. In addition, to the extent that I as Special Counsel am required to litigate the same issues in this Court and in the New Jersey state courts, additional and unnecessary expenses will be incurred by ICC.

7. At the time the Fairfield action was commenced, Fairfield General Corporation obtained an order requiring ICC to show cause why an order should not be entered directing ICC to

turn over certain documents allegedly belonging to Fairfield General Corporation. The said order to show cause is returnable on June 8, 1973 at 9:00 A.M. in the Superior Court of New Jersey, Chancery Division, Essex County.

8. Plaintiff has moved, by Order to Show Cause, because, as shown above, time is of the essence and a restraining order is required immediately.

9. By a telephone call at 9:30 A.M. today, to Messrs. Shanley & Fisher, attorneys for Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corp., in the two New Jersey actions I advised said defendants that the present application would be submitted today.

10. No prior application for the relief presently requested or for similar relief has been made by plaintiff to any other court of judge.

WHEREFORE, it is respectfully urged that the relief requested in this Order to Show Cause presented herewith be granted in all respects.

David M. Butowsky

Sworn to before me this
day of June, 1973.

GRACIE V. LEFLIEM
Notary Public, State of New York
No. 41-3291331
Qualified in Queens County
Commission Expires March 30, 1974

ey(s): Shanley & Fisher, Esqs.
Address & Tel. No.:
[illegible] Street, Newark, New Jersey 07102
cy(s) for Plaintiff(s) 201-643-1220

iff(s)

RAYWAYS LEASING CORPORATION,
a New Jersey corporation,

vs.

dant(s)

INTERNATIONAL CONTROLS CORPORATION,
a Florida corporation,

SUPERIOR COURT OF NEW JERSEY

LAW *DIVISION*

ESSEX *COUNTY*

Docket No. L-33210-72

CIVIL ACTION

Summons

The State of New Jersey, to the Above Named Defendant(s):

INTERNATIONAL CONTROLS CORPORATION

ARE HEREBY SUMMONED *in a Civil Action in the Superior Court of New Jersey, instituted by* bove named plaintiff(s), *and required to serve upon the attorney(s) for the plaintiff(s), whose name* ffice address appears above, *an answer to the annexed complaint within* 20 *days after the* ce of the summons and complaint upon you, exclusive of the day of service. If you fail to do so, ment by default may be rendered against you for the relief demanded in the complaint. You shall mptly file your answer and proof of service in duplicate with the Clerk of the Superior Court, State se Annex, Trenton, New Jersey 08625, in accordance with the rules of civil practice and procedure.

d: June 1, 19 73.

/s/ Walter P. Newman, Jr.
Walter P. Newman, Jr.
Clerk of the Superior Court

ress for Service:
200 Fairfield Road
Fairfield, New Jersey

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STANLEY & FISHER
570 Broad Street
Newark, New Jersey 07102
(201) 643-1220
Attorneys for Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO. L-2821-72

SKYWAYS LEASING CORPORATION, a New Jersey corporation,

Plaintiff,

vs.

INTERNATIONAL CONTROLS CORPORATION, a Florida corporation,

Defendant.

Civil Action

COMPLAINT

Plaintiff, Skyways Leasing Corporation, a corporation of the State of New Jersey, complaining of Defendant, says:

FIRST COUNT

1. Plaintiff is a New Jersey corporation, with offices at 167 Fairfield Road, Fairfield, New Jersey.

2. Defendant is a corporation of the State of Florida, with principal offices at 200 Fairfield Road, Fairfield, New Jersey.

3. Plaintiff owns an aircraft more particularly described as a Boeing Model 707/321, Serial Number 17606, and related necessary equipment for use on board the aircraft.

4. On or about October 1, 1971, Plaintiff and Defendant entered into a Lease Agreement, whereby Defendant leased the said aircraft from the Plaintiff for a period of five (5) years. A copy of the said Lease Agreement is annexed hereto as Exhibit "A".

5. Plaintiff has complied with and met its obligations under the said Lease Agreement.

6. The aforesaid Lease Agreement provided in Article IV., therefor, inter alia, the obligation on Defendant's part as Lessee to pay a rental of $47,000.00 per month to the Plaintiff for each of the months of January, 1973 through September, 1976, said rental being payable on or before the 1st day of each month.

7. The Defendant has failed to pay the said monthly rental of $47,000.00 for each of the months of February, 1973 and March, 1973 despite written demand for payment made by Plaintiff upon Defendant.

WHEREFORE, Plaintiff demands Judgment against the Defendant in the sum of $94,000.00 plus interest and costs of suit.

SECOND COUNT

1. Plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 5 of the First Count and makes the same a part hereof as though set forth at length herein.

2. The aforesaid Lease Agreement provided in Article IV, therefor, inter alia, the obligation on Defendant's part as Lessee to pay a rental of $83,000.00 per month to the Plaintiff for each of the months of January, 1972 through December 1972, said rental being payable on or before the 1st day of each month.

3. The Defendant has failed to pay the said monthly rental of $83,000.00 in accordance with the Lease Agreement despite written demand for payment made by Plaintiff upon Defendant.

WHEREFORE, Plaintiff demands Judgment against the Defendant plus interest and costs of suit.

THIRD COUNT

1. Plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 5 of the First Count and makes the same a part hereof as though set forth at length herein.

2. Pursuant to Articles VI and XI of the Lease Agreement, the Defendant had the responsibility to pay for all operating and maintenance costs and, upon Defendant's failure to pay such charges, Plaintiff had the right to discharge such expenses at the expense of the Defendant, such costs and expense thereof falling due and payable upon the demand of Plaintiff upon Defendant.

3. Defendant caused the aircraft to be serviced in Texas by Qualitron Aero, a corporation of the State of California

engaged in the business of aircraft maintenance, alterations and servicing, thereby incurring service charges of $78,413.97.

4. Defendant failed and refused to pay the aforesaid maintenance and service charges due and owing to Qualitron Aero causing Qualitron Aero to place a lien against the aircraft. In order to obtain possession of the aircraft, Plaintiff was required and did in fact pay the said maintenance and service charges in the sum of $78,413.97 to Qualitron Aero.

WHEREFORE, Plaintiff demands Judgment in the amount of $78,413.97 plus interest and costs of suit.

FOURTH COUNT

1. Plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 5 of the First Count and makes the same a part hereof as though set forth at length herein.

2. Pursuant to an Agreement between Plaintiff and Defendant entered into at or about the same time as the Lease Agreement, Plaintiff agreed to assume the costs of certain refurbishments and modifications to the aircraft, said refurbishments and modifications having an agreed upon cost of $350,000.00.

3. At all times referred to herein, the aircraft was under the full control and use of the Defendant, its agents, servants, employees and officers.

4. At the direction of Defendant's agents, servants, employees, and officers modifications and changes were made to

the aircraft in addition to the modifications and changes set forth in the original agreed upon plans and specifications for the refurbishment and alterations of the aircraft.

5. Such changes from the original agreed upon plans and specifications resulted in costs and charges, over and above the originally agreed upon cost, in the additional amount of $279,345.00.

6. Upon Defendant's refusal to pay the aforesaid additional charges in the amount of $279,345.00 a possessory lien was impressed on the aircraft, pursuant to which, the aircraft was detained for a period of six (6) weeks.

7. Plaintiff made a demand upon Defendant to pay these additional charges to release the said lien.

8. Upon Defendant's refusal to pay said additional charges in order to regain possession of the aircraft, Plaintiff was required to pay the aforesaid additional charges, to Plaintiff's damage in the amount of $279,345.00.

WHEREFORE, Plaintiff demands Judgment against the Defendant for $279,345.00, plus interest and costs of suit.

FIFTH COUNT

1. Plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 5 of the First Count and makes the same a part hereof as though set forth at length herein.

2. Pursuant to Article VI(b) of the Lease Agreement, Defendant is obligated to pay into an escrow account certain amounts based upon the number of hours "logged" on the aircraft.

3. On information and belief, the said aircraft was flown for many hours for which no payments were made into the escrow fund as required by the Lease Agreement.

4. By virtue of the aforesaid use of the aircraft, there is due and owing from the Defendant diverse sums payable into the said escrow account.

WHEREFORE, Plaintiff demands Judgment against the Defendant for damages plus interest and costs of suit.

SIXTH COUNT

1. Plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 5 of the First Count and makes the same a part hereof as though set forth at length herein.

2. The aforesaid Lease Agreement provided in Article X thereof, inter alia, that Defendant shall not paint or print its name or other symbols upon the exterior of the aircraft.

3. Defendant caused its name and/or corporate symbol or logo to be painted upon the tail of said aircraft.

4. By reason of the foregoing, Plaintiff was required to expend the sum of $140.00 for the restoration of the exterior of the said aircraft.

WHEREFORE, Plaintiff demands Judgment against the Defendant for $140.00 and interest and costs of suit.

SEVENTH COUNT

1. Plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 5 of the First Count and each and every allegation contained in the Fourth Count and makes the same a part hereof as if set forth at length herein.

2. The aforesaid wrongful and unauthorized changes, additions and modifications to the original plans and specifications for the refurbishment and alteration of the aircraft have substantially decreased the value of the aircraft by limiting its use and resale value all to Plaintiff's damage.

WHEREFORE, Plaintiff demands Judgment against the Defendant for damages plus interest and costs of suit.

EIGHTH COUNT

1. Plaintiff repeats and reiterates each and every allegation of the foregoing Counts and makes the same a part hereof as if set forth at length herein.

2. The aforesaid Lease Agreement provides that, upon default, the balance of the rent then due under the Lease Agreement shall be immediately due and payable.

3. The following specified acts and/or failures to act committed by the Defendant through its agents, servants, employees, and officers constitute defaults by the Defendant

nder the terms of the Lease Agreement:

(a) The failure to make rental payments which were due and owing for the months of February and March, 1973, and the calendar year of 1972.

(b) The failure to pay accumulated maintenance and service costs.

(c) The failure to pay the required charges into the maintenance escrow account.

(d) The failure to pay the costs of additional alterations and modifications to the aircraft, which work was performed at the request of Defendant.

(e) The placing of Defendant's name, symbol or marking on the aircraft.

4. Pursuant to Article XXI of the Lease Agreement, Plaintiff gave the Defendant timely notice of each and every aforementioned default and gave the Defendant an opportunity to cure the said defaults as provided therein.

5. The Defendant has failed and continues to fail to cure the aforementioned defaults.

6. The balance due for rental payments under the terms of the Lease Agreement from April 1973 through September of 1976 is in the amount of $1,974,000.00.

WHEREFORE, Plaintiff demands Judgment against the Defendant for $1,974,000.00 plus interest and costs of suit.

NINTH COUNT

1. Plaintiff repeats and reiterates each and every allegation of the foregoing Counts and makes them a part hereof as if set forth at length herein.

2. By reason of the Defendant's defaults and after written notice to cure the same, Plaintiff terminated the Lease Agreement with the Defendant in accordance with the provisions of the said Lease Agreement.

3. By reason of Defendant's defaults and the termination of the Lease Agreement, Plaintiff has been deprived of the economic benefits of its Lease Agreement with Defendant, lost profits and incurred additional expenses presently and in the future, all to Plaintiff's damage.

WHEREFORE, Plaintiff demands Judgment against the Defendant for damages sustained as a result of said defaults and termination plus interest and costs of suit.

TENTH COUNT

1. Plaintiff repeats and reiterates each and every allegation of the foregoing Counts and makes the same a part hereof as if set forth at length herein.

2. By reason of the aforementioned defaults committed by the Defendant and the subsequent termination of the Lease Agreement by Plaintiff, Defendant became obligated, at Defendant's cost and expense to return the aircraft to the Plaintiff at a designated location.

3. Defendant failed to return the aircraft as requested by Plaintiff in accordance with the provisions of the Lease Agreement.

4. By reason of the foregoing, Plaintiff was required to expend sums of money to bring the aircraft from the place where Defendant had last used the said aircraft, to Plaintiff's damage in the sum of $10,000.00.

WHEREFORE, Plaintiff demands Judgment against the Defendant for $10,000.00 and interest and costs of suit.

SHANLEY & FISHER
Attorneys for Plaintiff

BY_____
J. WILLIAM BARBA

JURY DEMAND

The Plaintiff demands a Trial by a jury of twelve (12) on all the issues involved herein.

SHANLEY & FISHER
Attorneys for Plaintiff

BY_____
J. WILLIAM BARBA

THIS AGREEMENT entered into this first day of October, 1971 by and between SKYWAYS LEASING CORPORATION, a New Jersey corporation, hereinafter called "Skyways", and International Controls Corp., a Florida corporation, hereinafter called Lessee.

W I T N E S S E T H :

WHEREAS, Lessee desires to lease one Boeing Model 707/321 aircraft from Skyways and Skyways is willing to lease said aircraft to Lessee;

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and the rentals and other considerations herein reserved, the parties hereby agree as follows:

ARTICLE I -- Aircraft Leased to Lessee

(a) Skyways hereby leases to Lessee the Boeing Model 707/321 type aircraft (Manufacturer's Serial No. 17605), Federal Aviation Administration Registry No. N11RV (hereinafter sometimes referred to as the "Aircraft"). The term "Aircraft" as used in this Agreement shall include the airplane, the engines and all parts, equipment, instruments, accessories and other property listed in Exhibit A attached hereto, and such replacement items as Lessee may install during the period the Aircraft is in its possession.

(b) The Aircraft shall be delivered to Lessee by Skyways at Newark Airport, Newark, New Jersey, United States.

(c) Lessee shall not mortgage, pledge, assign, transfer or sublet nor voluntarily part with possession of

the Aircraft in any manner whatsoever, either directly or indirectly without the written consent of Skyways; nor shall Lessee willfully do or suffer anything whereby the Aircraft shall, or may be seized, taken in execution, impounded, attached, damaged, or destroyed.

(d) There shall be no obligation on the part of Skyways for any reason whatsoever to replace the Aircraft.

(e) Skyways makes no representations nor warranties, express or implied, of any kind or nature whatsoever regarding the Aircraft or its equipment or the condition or serviceability thereof.

ARTICLE II -- Use of Aircraft

As an inducement to Skyways to enter into this Agreement, Lessee represents and warrants that the Aircraft will be used by Lessee only for transporting certain of the officers, directors, employees and guests of it or any of its affiliated corporations and their baggage. Subject to Lessee's right to assign or sublet its rights under this Agreement, Lessee agrees that it will not operate the Aircraft for hire or reward (including reimbursement of expenses) or allow the Aircraft to be used for instructional purposes.

ARTICLE III -- Duration of Lease

The lease of the Aircraft shall be for a term of five (5) years commencing on October 1, 1971 and ending September 30, 1976.

ARTICLE IV -- Deposit and Rental

(a) Lessee will deposit with Skyways on or before December 15, 1971 the sum of $100,000 as security for the

Affidavit

performance by Lessee of the terms of this Agreement. Such sum shall bear interest at the rate of 6% per annum and such interest shall be credited to the benefit of Lessee and become part of the security deposited hereunder. Skyways may use or apply the whole or any part of the security deposited hereunder for any rent or other sum as to which Lessee is in default or for any sum which Skyways may expend or may be required to expend by reason of Lessee's default in respect of any of the terms of this Agreement. In the event that Lessee shall comply with all of the terms of this Agreement, the security, together with any interest earned thereon, shall be returned to Lessee after the termination of this Agreement and after delivery of possession of the Aircraft to Skyways. Lessee shall not assign or encumber the security, and neither Skyways nor its successors or assigns shall be bound by any such assignment or encumbrance.

(b) Lessee shall pay Skyways, as rent for the Aircraft, the sum of $100,000 per month for each of the months of October, November and December 1971 payable on or before December 15, 1971; thereafter, payable in advance on or before the first day of each month, $83,000 per month for each of the months January through December 1972; and $47,000 per month for each of the months January 1973 through September 1976, inclusive whether or not the Aircraf is operating or is in operating condition, is grounded by reason of weather, mechanical difficulties, repair or for

any other reason whether similar or not. The foregoing rent, includes the cost of insurance coverage specified in Article XII hereof (currently $125,000 per annum), and shall be subject to increase during the term of this Agreement in an amount equal to the increase of the cost to Skyways of maintaining such insurance coverage. Skyways shall give Lessee written notice of any such increase together with documentation evidencing the same. In the event Lessee defaults on any of the terms, provisions, and conditions of this Agreement, including but not limited to, the payment of rent, Skyways may use, apply or retain the whole or any part of the rent so paid to the extent required, for any other sum as to which Lessee is in default, or for any sum which Skyways may expend or may be required to expend by reason of the default of Lessee on any of the terms, covenants, and conditions of this Agreement.

(c) All rental payments hereunder shall be made at the office of Skyways at 171 Passaic Avenue, Fairfield, New Jersey, or at such other place as Skyways may from time to time designate in writing.

ARTICLE V -- Termination

(a) This Agreement may be terminated at the option of Skyways in the event of sale or transfer of ownership of the Aircraft on five (5) days' prior written notice. Such termination shall take effect upon return of the Aircraft to Skyways pursuant to the provisions of this Agreement following the giving of such notice.

Affidavit

Skyways to designate, and upon such return:

(i) The Aircraft shall have an appropriate current Federal Aviation Administration Certificate of Airworthiness.

(ii) The Aircraft shall be in the same condition as when delivered and equipped with the same or better equipment, except for reasonable wear and tear for ordinary use subject to the provisions of Article VI hereof.

(iii) Lessee shall cause the balance, if any, of the escrow account established pursuant to Article VI (b) hereof to be paid over to Skyways.

(iv) Lessee shall pay to Skyways a sum equal to the number of hours logged on each aircraft engine during the final month of the term of this Agreement or portion thereof multiplied by $7.50 per engine and a sum equal to the number of flight hours logged by the Aircraft during the final month of the term of this Agreement or portion thereof mulitplied by $170.00.

Provided further, that Lessee agrees that it will make the Aircraft available to Skyways for at least three (3) days and not more than ten (10) days immediately prior to the termination of this Agreement at an airport designated by Skyways for the purpose of permitting Skyways to inspect the condition of the Aircraft. In connection with such inspection, Skyways shall be entitled to an acceptance flight check of not more than one hour's duration, at the expense of Lessee, and Lessee will at its own expense and at Skyways' request correct any condition of the Aircraft discovered on such acceptance check, which condition makes the Aircraft

In the event rehabilitation and repairs are necessary to return the Aircraft in the prescribed condition, the term of this Agreement shall be deemed extended for the period required to enable Lessee to make such rehabilitation, repairs, and correction and all of the terms and conditions of this Agreement shall apply to such extended period. In the event Lessee fails or is unable for any reason to return the Aircraft to Skyways on the specified date of termination of this Agreement, then, except as herein expressly otherwise provided, the term of this Agreement shall be extended until such time as Lessee returns the Aircraft to Skyways and all of the terms and conditions of this Agreement shall apply to such extended period. Rent shall be paid by Lessee to Skyways at a rate equal to the pro rata monthly rent then in effect, until the termination of any such extended term of this Agreement.

Skyways agrees that in the event of the total loss (or constructive total loss) of the Aircraft, it will accept the insurance value of the Aircraft as provided in Article XII (f) hereof, in discharge of the obligation of Lessee to redeliver the Aircraft and Lessee agrees to pay such amount irrespective of the cause of loss and whether or not insured against. In the event the Aircraft shall during the term of this Agreement be lost or totally destroyed and Skyways shall have received payment in full of all loss and damage sustained by Skyways by reason of said total destruction of the Aircraft, then this Agreement shall be automatically

cancelled and terminated as of the date of such payment, and Lessee shall be obligated to pay only the rental due to the date of such payment. In the event of a partial loss, the rental shall be unabated, and if the time necessary to repair the Aircraft goes beyond the termination date of this Agreement, this Agreement shall be extended to provide sufficient time to repair the Aircraft completely and full rental shall be paid during this extended period.

ARTICLE VI -- Maintenance, Care and Overhaul of the Aircraft

(a) Lessee shall, at its own expense during the term of this Agreement, maintain and keep the Aircraft in good order and repair subject to the requirements of Part 121 of the Regulations of the Federal Aviation Administration of the United States ("FAA") and the equivalent rules and regulations of any other governmental regulatory authorities which may, from time to time, have jurisdiction over the Aircraft. Lessee shall, within a reasonable time at its own cost and expense, replace in or on the Aircraft all parts, equipment, appliances, instruments or accessories in accordance with manufacturers specification which may be time life retired, lost, destroyed, confiscated or rendered unfit for use, with other property which shall:

(i) Be in good operating condition and shall have a value and utility at least equal to that of the property replaced if the same were in usable condition and good repair, and

liens and encumbrances;

Provided further, that Lessee shall, at its own expense, cause all engine overhaul and all inspection and maintenance service to be performed on the Aircraft, and Lessee shall be responsible for all other repairs required on the Aircraft, including replacement of parts when necessary, and Lessee shall accomplish FAA Airworthiness Directives applicable to the Aircraft and shall accomplish the licensing and relicensing of the Aircraft as applicable if required by the FAA or other appropriate governmental authorities at any time during the term of this Agreement; provided, however, that if Lessee shall default in any of the provisions hereof, Skyways shall have the right to correct said default and the cost thereof shall become due and payable on demand of Skyways. Failure to make such payment when demanded shall be cause for termination of this Agreement. Any such termination shall not excuse Lessee from its obligations to make rental payments for the balance of the term hereof.

(b) Lessee shall be responsible for all costs of airframe and engine overhauls, during the term hereof. It is agreed that in the event Lessee wishes to accomplish a major overhaul on the airframe or engines during the term of this Agreement the specifications of any such overhaul and the shop accomplishing such work are to be approved by Skyways in writing in current status. On or before the fifteenth

day of each month during the term of this Agreement, commencing on the third month of this Agreement, Lessee will deposit into an escrow account, to be maintained by a banking institution mutually acceptable to the parties hereto:

(i) A sum equal to the number of hours logged on each aircraft engine during the preceding calendar month multiplied by $7.50 per engine (except the initial payment shall relate to the hours logged on each Aircraft engine during the two preceding calendar months); and

(ii) A sum equal to the number of flight hours logged during the preceding calendar month multiplied by $170.00(except the initial payment shall relate to the flight hours logged during the two preceding calendar months).

The terms of the escrow pursuant to which such sums shall be held shall provide that the sums deposited therein shall be used to pay for the cost of any overhauls of the Aircraft's airframe, wings or engines performed during the term of this Agreement, and further that the balance of the escrow, if any, shall be paid over to Skyways upon the termination of this Agreement. In addition, the terms of the escrow shall provide that Skyways shall be notified of all deposits made therein and consent in writing to all withdrawals made therefrom.

Affidavit

(c) Upon termination of this Agreement, Lessee shall deliver to Skyways all overhaul and inspection records, including all log books on the airframe and engines relating to the operation of the Aircraft during the term of this Agreement.

(d) Lessee covenants and agrees to make the Aircraft available to Skyways at Greater Southwest Airport, Fort Worth, Texas, for a period or periods of approximately sixty (60) days, in the aggregate, during the months of December 1971 and January 1972 for the purpose of having the interior of the Aircraft refurbished at the expense of Skyways.

ARTICLE VII -- Maintenance of Records

Skyways will deliver to Lessee with the Aircraft current log books and records appertaining to the Aircraft and such other data as Lessee shall reasonably request. Lessee shall maintain all records during the term of this Agreement and will return and deliver said log books and records to Skyways upon return of the Aircraft to Skyways. During the term of this Agreement, Lessee will make such log books and records available, upon request, for inspection by Skyways or its duly authorized agents or representatives.

ARTICLE VIII - Modification of the Aircraft

Subject to the terms of this Agreement Lessee shall have the right to alter, modify or make additions and improvements to the Aircraft after having obtained the

prior written consent of Skyways and provided that such alterations, modifications, additions, or improvements do not reduce the value of the Aircraft and provided further that all such alterations, modifications, additions, or improvements shall be in accord with standards set by the FAA and any other appropriate regulatory agency having jurisdiction over the Aircraft. Any such alteration, modification, addition or improvement to the Aircraft shall become the property of Skyways and shall be subject to all the terms of this Agreement.

ARTICLE IX -- Use of the Aircraft

Lessee may operate the Aircraft subject to the exceptions stated in this Agreement provided however, that it shall not use the Aircraft in violation of any foreign, federal, state, territorial, or municipal law or regulation or any rules and regulations of any public authorities having jurisdiction over the Aircraft and shall be solely responsible for any fines, penalties or forfeitures and taxes occasioned by any violation thereof, and if such fines or penalties are imposed upon Skyways and paid by it, Lessee shall reimburse it therefor on demand of Skyways.

Lessee may not permit the Aircraft to be taken into any area of the world which is not included in the insurance coverage maintained pursuant to Article XII (c) hereof, provided, however, Skyways will, at the written request of Lessee, use its best efforts to expand such insurance coverage on either a temporary or permanent basis.

ARTICLE X -- Exterior of Aircraft

Lessee shall maintain the exterior of the Aircraft in good condition and shall not print or paint its name or any other registration number or other symbols upon the exterior of the Aircraft. However, Lessee shall affix a permanent plaque in a conspicuous place on the Aircraft stating:

> "This Aircraft is owned by Skyways Leasing Corporation and is subject to the terms and conditions of an Agreement dated October 1, 1971, by and between Skyways Leasing Corporation and International Controls Corp."

and any and all documents which may be required by the FAA or any other regulatory agency having jurisdiction over the Aircraft for this purpose.

ARTICLE XI -- Taxes and Operating Expenses

Lessee shall have absolute control, direction, and responsibility for, and shall bear and pay all costs of operating and maintaining the Aircraft, including all taxes, assessments, custom duties, tariffs, import charges or governmental charges levied upon the Aircraft and all excise taxes, gasoline taxes, licensing fees, landing fees, or any other airport fees, or any other operating expenses of whatever nature and kind, and Lessee shall have responsibility for and shall promptly pay and discharge all sales and use taxes incurred by reason of this Agreement, provided however, that upon Lessee's default to so discharge any such tariffs, custom or other import duties taxes, assess-

ments or costs of operation, Skyways may do so at the expense of Lessee and charge the same to Lessee and such cost and expense thereof shall become due and payable on demand of Skyways.

ARTICLE XII -- Risk of Loss or Damage and Liability

(a) Lessee agrees and covenants to indemnify, save, and hold Skyways harmless against any and all expenses, losses, damages, including reasonable attorneys' fees caused by or arising out of in whole or in part, the possession, management or operation of the Aircraft by Lessee and/or its bailees, agents, employees or representatives.

(b) Lessee, at all times during and throughout the term of this Agreement, shall be solely liable for damages to property of Lessee or property of others, or for personal injuries or death to Lessee's officers, agents, servants, or employees, or to any other persons, including without limitation, those third parties who may become passengers on the Aircraft or suffer ground damage, arising from or incident to the possession and use of the Aircraft from any cause whatsoever and Lessee shall save Skyways harmless from any and all such claims.

(c) The rent specified in Article IV hereof includes the cost and expense incurred by Skyways in connection with insurance insuring Fairfield Aviation Corporation, Skyways (including Pan American World Airways, Inc. pursuant to the terms of the Chattel Mortgage referred to in Article XXI hereof) and Lessee, as

their respective interests may appear, against liability for loss, injury, damage, claims or expenses arising out of injuries to or deaths of passengers and third parties, and damage to property (including baggage and cargo) caused by Lessee's operation or possession of the Aircraft and against loss, destruction or damage to the Aircraft, such insurance shall include the following coverage:

(i) All risk hull insurance for the full value of the Aircraft (with the following deductible provisions: flight, taxiing and ingestion - $60,000 each claim; ground - $2,500 each claim) with Skyways, Fairfield Aviation Corporation, Lessee and Pan American World Airways, Inc., named as co-insured. In addition, such insurance includes a "Breach of Warranty" clause whereby the insurer agrees that a breach of the insuring conditions will not invalidate the insurance as to Pan American World Airways, Inc., Fairfield Aviation Corporation, and Skyways, as their respective interests may appear, and a waiver of all rights of subrogation by the insurer against Pan American World Airways, Inc., Fairfield Aviation Corporation and Skyways.

(ii) Insurance coverage for the full value of the Aircraft against risks of war, strikes, riots, civil commotions, vandalism, malicious damage, confiscation and hi-jacking with Skyways, Fairfield Aviation Corporation, Lessee and Pan American World Airways, Inc., named as co-insured, such insurance includes a "Breach of Warranty" clause whereby the

tions will not invalidate the insurance as to Pan American World Airways, Inc., Fairfield Aviation Corporation, and Skyways, as their respective interests may appear, and a waiver of all rights of subrogation by the insurer against Pan American World Airways, Inc., Fairfield Aviation Corporation and Skyways.

(iii) Single limit bodily injury or death insurance, including passenger and property damage, in the amount of $20,000,000 with Skyways, Fairfield Aviation Corporation, Lessee and Pan American World Airways, Inc. named as co-insured, such insurance includes a "Breach of Warranty" clause where the insurer agrees that a breach of the insuring conditions will not invalidate the insurance as to Pan American World Airways, Inc., Fairfield Aviation Corporation, and Skyways, as their respective interests may appear, and a waiver of all rights of subrogation by the insurer against Pan American World Airways, Inc., Fairfield Aviation Corporation and Skyways.

(d) Each policy of insurance relating to the insurance obtained pursuant to sub-paragraph (c) above of this Article XII shall provide that the proceeds of such insurance shall be payable to Skyways and Pan American World Airways, Inc., as their interests in the Aircraft may from time to time appear. All insurance proceeds received by Skyways with respect to the Aircraft shall:

(i) be paid over the Lessee, in the case of repairable damage to the Aircraft, upon receipt by Skyways of proof satisfactory to Skyways of the proper repair of such damage; or

the loss, destruction or damage beyond repair of the Aircraft, to satisfy Lessee's obligation to make the payment required by Article V (b) of this Agreement.

(e) Skyways covenants and agrees to use its best efforts to obtain such additional insurance coverage as Lessee may reasonably request in writing to Skyways.

(f) For the purpose of this Article XII the full value of the Aircraft is fixed at $1,775,000.

ARTICLE XIII -- Inspection

Lessee agrees to permit Skyways or its duly authorized agent to inspect the Aircraft, and its airframe and engine logs at any reasonable time, and to furnish to Skyways or its duly authorized agent any information in respect to the Aircraft and its use that Skyways may reasonably request.

ARTICLE XIV -- Assignments

In the event of sale or transfer of ownership of the Aircraft, Skyways shall have the unlimited right to assign its rights under this Agreement. Lessee shall not assign its rights under this Agreement, or delegate its duties under this Agreement or enter into any sublease of the Aircraft without the prior written consent of Skyways. In any event, any such assignment or sublease will be subject to all of the terms hereof and Lessee will remain liable for the performance of all of the terms and conditions of this Agreement, including but not limited to the payment of rent and deposits into escrow pursuant to Article VI (b) hereof.

ARTICLE XV -- Substitution of Aircraft

In the event Skyways acquires an aircraft with comparable range and utility to the Aircraft on or before October 1, 1972, Lessee agrees to lease such aircraft from Skyways for a period of at least

stantially equivalent to the terms of this Agreement provided, however, the rental payment and escrow deposits relating to such aircraft will bear the same relationship to Skyways' costs relating to such aircraft as the payments provided for herein bear to Skyways' costs relating to the Aircraft.

ARTICLE XVI -- Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

ARTICLE XVII -- Notices

Service of all notices under this Agreement shall be sufficient if given in writing and delivered personally to the parties subscribing here below, or sent by certified mail to the parties at their addresses herein set forth, or at such addresses as the parties may provide for in writing from time to time.

To Skyways: Skyways Leasing Corporation
171 Passaic Avenue
Fairfield, New Jersey 07006
Attention: Mr. Ralph P. Dodd

To Lessee: International Controls Corp.
200 Fairfield Road
Fairfield, New Jersey 07006
Attention: Mr. Frank G. Beatty

ARTICLE XVIII -- No Waiver

The failure of Skyways in any one or more instances to insist upon strict performance or observance of one or more of the covenants or conditions hereof, or to exercise

any remedy, privilege or option herein conferred upon or reserved to Skyways, shall not be construed as a waiver of any future breach of any covenants or conditions or of the right to enforce the same or to exercise such privilege, option, or remedy, but the same shall continue in full force and effect.

ARTICLE XIX -- Construction

Time is of the essence of this Agreement and each of its provisions herein. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

ARTICLE XX -- Governing Law

This Agreement, regardless of where executed, shall be construed and performance shall be determined in accordance with the laws of the State of New Jersey.

ARTICLE XXI -- Default

If Lessee defaults in any terms, covenants and conditions of this Agreement, Skyways at its option, upon ten (10) days prior written notice to Lessee may elect to terminate this Agreement, and this Agreement shall be terminated at the end of said ten (10) day period unless Lessee shall correct the default within said period. Notwithstanding the foregoing, Lessee shall be entitled to no more than five (5) days notice with respect to default in payments of rent or deposits into escrow hereunder. In the event of such termination, Lessee shall, at its own cost and expense, return the Aircraft to Skyways at the place designated by Skyways in such notice and Skyways shall further have the right:

(a) To declare the entire amount of rent hereunder immediately due and payable without further notice or demand to Lessee and Lessee waives such notice.

(b) To sue for and recover all rents and other payments it has accrued or thereafter accruing with respect to the Aircraft.

(c) To take possession of the Aircraft without further demand or notice wherever the same may be located, without any court order or other process of law and Lessee hereby waives any and all damages occasioned by said repossession.

(d) To pursue any other remedy either in law or equity available to Skyways.

In the event Skyways should recover possession of the Aircraft and should re-lease the Aircraft to a third party, Lessee shall thereafter be obligated to Skyways for any deficiency between the rental received by Skyways from such third party, and the rental specified hereunder.

ARTICLE XIII--Insolvency

In the event of any act of insolvency by Lessee, which shall include but not be limited to its application for or consent to the appointment of a receiver, trustee or liquidator of all or of a substantial portion of its assets; its being unable to or making an admission in writing of its inability to pay its debts as they mature; making a general assignment for the benefit of creditors;

being adjudicated a bankrupt or insolvent; filing a voluntary petition in bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law; filing an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against it in any bankruptcy reorganization or insolvency proceeding, or take any action under the laws of any applicable jurisdiction analogous to any of the foregoing, or if corporate action shall be taken by it for the purpose of effecting any of the foregoing, then and in that event Skyways shall have and may exercise any one or more of the remedies set forth in Article XXI hereof, and this Agreement will be deemed to have terminated concurrently with the act of insolvency and shall not be treated as an asset of Lessee.

ARTICLE XXIII- Subordination

This Agreement hereby made is specifically subject and subordinate to Chattel Mortgage dated as of June 14, 1971 between Skyways Leasing Corporation and Pan American World Airways, Inc., as Mortgagee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SKYWAYS LEASING CORPORATION

BY _____

ATTEST:

_____
Asst. Secretary

INTERNATIONAL CONTROLS CORP.

BY _____

Avionics and Instrument Equipment Lists and Landing Gear and Airframe Status.

I Avionics Equipment List
Radio Installation

A. High Frequency Communications - Dual

2 ea. Aerocom "Atom" High Frequency Transmitters
2 ea. Aerocom "Star" High Frequency Receivers
2 ea. Aerocom "Pack" Power Supply
2 ea. Unival 116769 Control Amplifier
2 ea. Unival 116694 Antenna Coupler
2 ea. Gables Engrg. Control Panel
1 ea. Baco Probe Antenna

B. VHF Communications - Dual

2 ea. Collins 17L6/17L7 Transmitter
2 ea. Bendix RA18/RA21 VHF Receiver
2 ea. Gables Control Unit
2 ea. Baco 65-1791 Antenna

C. Navigation Equipment

(1) Automatic Direction Finders - Dual

2 ea. Collins 51Y (3) ADF Receivers
2 ea. Collins ADF1, ADF2 Control Panel
2 ea. Collins 137A-2 Loop Antenna
2 ea. Baco Sense Antenna

(2) Bendix Doppler - Dual

2 ea. Bendix DNA24B3 Controller Computer
2 ea. Bendix CNA12A Control
2 ea. Bendix Doppler Indicator
2 ea. Bendix Doppler Transceiver

D. EDO Loran

1 ea. Edo 345 Loran Receiver
1 ea. Edo Receiver/Timer
1 ea. Edo Control Unit

E. Marker Beacon

1 ea. Bendix Radio 75 meg. Marker Receiver
1 ea. Gables Control Panel
1 ea. Collins Antenna
2 ea. Baco Indicator (Capt/F.O.)

F. Distance Measuring Equipment (DME)

1 *Collins 660 E Interrogator
1 ea. Gables Control Panel
1 ea. Sensors Antenna
2 ea. Collins Indicator (Capt/F.O.)

G. VOR/ILS - Dual

2 ea. Collins 51R3 Receivers - VOR
2 ea. Collins 51V3 Receiver - Glide Slope
1 ea. Collins 351A-1C VOR Accessory Unit
1 ea. Collins Glide Slope Antenna
1 ea. Baco VOR/LOC Antenna
2 ea. Gables Control Panels
2 ea. Sperry Indicator RMI
2 ea. Sperry Indicator PDI

H. Radio Altimeters

Low Range Radio Altimeter (Range 0-2500 Ft.)
1 ea. Litton Transmitter-Receiver
2 ea. Gables Control Panel
2 ea. Litton Indicator (Capt/F.O.)
4 ea. Spec 530 Antenna

High Range Radio Altimeter (Range 0-50000 Ft.)
1 ea. MIL Transmitter-Receiver
1 ea. MIL Indicator
1 ea. MIL Antenna

I. Weather Radar - RCA AVQ10

1 ea. RCA M 137517 Transmitter/Receiver
1 ea. RCA M 137521 Accessory Unit
1 ea. RCA M 137586 Antenna Unit
1 ea. RCA M 137524 Indicator
1 ea. RCA G565A Control Panel

* Alternate - ITT Federal

J. ATC Transponder

1 ea. Collins Transponder
1 ea. Gables Control Panel
1 ea. Sensors Antenna

K. Interphone System - Gables Amplifier

An Interphone System is installed which provides internal and external communication for flight and service operations as well as between the flight deck, galleys and cabin attendant positions.

L. Passenger Address System - Gables Amplifier

Flight crew announcements or recorded music are directed to the passengers through the passenger address system.

Announcements can be made from the flight deck or cabin attendants' panels. Speakers are located throughout the lower cabin and lavatories.

II Flight Instruments
Indicator Index-Major Instruments

A. Captain's Panel

Nomenclature	Manufacturer	Vendor P/N
Indicated Airspeed	Kollsman	A41067-1[illegible]
Horizon Flight Director	Sperry	2587909-[illegible]
Low Range Radio Altimeter	Litton	44456 Mod 2
Kifis Barometric Altimeter	Kollsman	B41597-1[illegible]
Gyrosyn Compass	Sperry	1777213-[illegible]
Pictorial Deviation	Sperry	1777211-156
Rate of Climb	Bendix	1659-6A[illegible]
Integrally Lighted Clock	Aerosonic	88000-[illegible]
Mach meter	Kollsman	A[illegible]1807-16-[illegible]
Doppler	Bendix	37900-1A[illegible]
Distance Measuring Equipment	IT&T	AIN102A1

Nomenclature	Manufacturer	Vendor P/N
Three Axis Trim	Weston	1889-3211
True Airspeed	Kollsman	B337277-10-002
Ram Air Temp.	Lewis Engrg.	162BCL9W
Engine Power Instru.	Standard Grouping	
Stand by Horizon	Sfena	70[illegible]-7-V81

C. First Officer's Panel

Nomenclature	Manufacturer	Vendor P/N
Indicated Airspeed	Kollsman	A41067-10-011
Horizon Flight Dir.	Sperry	2587909-904
Low Range Radio Altimeter	Litton	4456 Mod 2
Kifis Barometric Altimeter	Kollsman	B41597-10-001
Gyrosyn Compass	Sperry	1777213-653
Pictorial Deviation	Sperry	1777211-756
Rate of Climb	Bendix	1659-6ABF6-1
Integrally Lighted Clock	Aerosonic	88000-4111
Machmeter	Kollsman	A31807-10-126
Doppler	Bendix	37900-1A1A2
Distance Measuring Equipment	IT&T	A1N102A1
Static Air Temp.	IDC	13966
Flap Position	United Cont.	F381-1A
System Hydraulic Pressure	Ametek	SRL07CE
Brake Hydraulic Pressure	Ametek	SRL07CK
Rudder Hydraulic Pressure	Ametek	SRL07CH

Landing Gear Status *

Main Landing Gear - 11,510 hrs. to overhaul
Nose Landing Gear - 11,110 hrs. to overhaul

* Status as of April 26, 1971

IV Airframe Status*

Total Airframe time-	39,591 hrs.
Heavy Package Service-	42,661 hrs.
Time Since Heavy Package-	40,214 hrs.

* Status as of April 26, 1971

Shanley & Fisher, Esqs.
Attorneys for Plaintiffs
570 Broad Street
Newark, New Jersey 07102
201-643-1220

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:ESSEX COUNTY
DOCKET NO.

FAIRFIELD GENERAL CORPORATION, a New Jersey corporation, FAIRFIELD AVIATION CORPORATION, a New Jersey corporation and SKYMARK LEASING CORPORATION, a New Jersey corporation,	:	Civil Action
Plaintiffs	:	ORDER TO SHOW CAUSE
-vs-	:	
INTERNATIONAL CONTROLS CORPORATION, a corporation of the State of Florida,	:	
Defendant	:	

THIS MATTER having been opened to the Court by Shanley & Fisher, Esqs., attorneys for the Plaintiffs, and the Court having considered the duly Verified Complaint and for

cause shown why the within Order to Show Cause should issue;

It is on this 3rd day of May, 1973, ORDERED that the Defendant, International Controls Corporation, show cause before the Superior Court of New Jersey, Chancery Division, Essex County, at the Essex County Court House, Newark, New Jersey on the 5th day of June, 1973 at 9:00 A.M. or as soon thereafter as counsel may be heard why an Order should not be entered directing the Defendant to return to the Plaintiffs all documents, records, files and books of account rightfully belonging to the respective Plaintiffs and, in the case of documents which are necessary to the completeness of Defendant's records due to prior relationship of the Plaintiffs with the Defendant, that copies of such records be delivered to the Plaintiffs.

It is FURTHER ORDERED that the aforesaid Verified Complaint and Order to Show Cause shall be served upon Defendant International Controls Corporation, at the offices of the Defendant at 200 Fairfield Road, Fairfield, New Jersey within 5 days.

S/ Irwin I. Kimmelman

J. S. C.

Shanley & Fisher, Esqs.
Attorneys for Plaintiffs
570 Broad Street
Newark, New Jersey 07102
201-643-1220

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: ESSEX COUNTY
DOCKET NO.

FAIRFIELD GENERAL CORPORATION, a New Jersey corporation, FAIRFIELD AVIATION CORPORATION, a New Jersey corporation, and SKYWAYS LEASING CORPORATION, a New Jersey corporation,	:	Civil Action
Plaintiffs	:	VERIFIED COMPLAINT
-vs-	:	
INTERNATIONAL CONTROLS CORPORATION, a corporation of the State of Florida,	:	
Defendant	:	

Plaintiffs, Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation, by their attorneys, Shanley & Fisher, Esqs., by way of Complaint against

the Defendant say:

FIRST COUNT

1. Plaintiff, Fairfield General Corporation, is a New Jersey corporation, with offices at 167 Fairfield Road, Fairfield, New Jersey.

2. Plaintiff, Fairfield Aviation Corporation, is a New Jersey corporation, with offices at 167 Fairfield Road, Fairfield, New Jersey. All of the common stock presently issued and outstanding, by Plaintiff, Fairfield Aviation Corporation, is owned by Plaintiff, Fairfield General Corporation.

3. Plaintiff, Skyways Leasing Corporation, is a New Jersey corporation, with offices at 167 Fairfield Road, Fairfield New Jersey. All of the common stock of Plaintiff, Skyways Leasing Corporation, presently issued and outstanding, is owned by Plaintiff, Fairfield Aviation Corporation.

4. Defendant, International Controls Corporation, is a corporation of the State of Florida, with principal offices at 200 Fairfield Road, Fairfield, New Jersey.

5. Prior to March of 1972, Plaintiff, Fairfield General Corporation, was a wholly-owned subsidiary of Defendant.

6. At various times prior and subsequent to March of 1972, the books, records, files and documents of Plaintiffs, Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation, were kept within the corporate offices of Defendant.

7. Plaintiff, Fairfield General Corporation, is an independent, publicly-owned corporation with more than 3,000 shareholders.

8. At various times, officers and/or directors of Plaintiff, Fairfield General Corporation, were also officers and/or directors of Defendant.

9. At the present time, no officer or director of Plaintiff, Fairfield General Corporation, is an officer or director of Defendant.

10. The aforesaid books and company records of Plaintiff Fairfield General, Fairfield Aviation and Skyways Leasing Corporation are necessary for the normal, day-to-day operations, for preparation of state and federal corporate tax returns, and for compliance with state and federal corporate reporting requirements.

11. Certain reports and filings due to the Securities and Exchange Commission are presently overdue and a requested extension of time from the agency has been denied.

12. The aforesaid documents are necessary to the preparation of these Securites and Exchange Commission files and reports.

13. Formal demand upon Defendant for the aforesaid documents was made by letter to its attorneys, as requested by employees of Defendant.

14. In response to this demand and to various prior and subsequent meetings and telephone conversations, certain documents were released by the Defendant to the Plaintiffs on May 18, 1973.

15. The documents released do not comprise all of the documents rightfully belonging to Plaintiffs.

16. The following documents and information have not been delivered:

(a) Cancelled stock certificates evidencing Defendant's prior ownership of Plaintiff Fairfield General Corporation;

(b) Stock certificates representing the ownership of Fairfield Aviation Corporation by Fairfield General Corporation and Skyways Leasing Corporation by Fairfield Aviation Corporation;

(c) Federal and State Income Tax schedules and data included in the Defendant's consolidated tax returns for the years 1967 through 1970 and details supporting tax adjustments for the years 1967 through 1971;

(d) Accounting work sheets and data supporting Fairfield General Corporation's SEC registrations filed in 1971 and 1972 and Form 10-K and Stockholders' Annual Reports for 1971;

(e) Invoices and other data supporting charges made to Plaintiffs through the Defendant's inter-corporate account.

17. Renewed telephone requests, subsequent to May 18, 1973, for the remaining documents have not resulted in production of the documents.

WHEREFORE, Plaintiffs, Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation, demand Judgment against the Defendant as follows:

(a) That the Defendant, International Controls Corporation, be directed to deliver to Plaintiffs all documents, books, records and similar materials now in possession of the Defendant rightfully belonging to Plaintiffs;

(b) That in the event any of the aforesaid documents are necessary to the completeness of Defendant's corporate records, by reason of the prior relationship of the Plaintiffs with Defendant, copies of all such documents be provided to Plaintiffs;

(c) That the Defendant be required to pay all costs of this suit including fees, disbursements and counsel fees;

(d) That the Court grant such other relief as may be just and proper.

SECOND COUNT

1. Plaintiffs repeat each and every allegation of the foregoing Count and makes them a part hereof as set forth at length herein.

2. Plaintiff, Fairfield General Corporation, entered into an Agreement with Defendant whereby certain officers or directors of the Defendant would also serve as officers and/or directors of Plaintiff, Fairfield General Corporation, and its subsidiaries. This Agreement is hereinafter referred to as the "Management Services Agreement."

3. Pursuant to this Management Services Agreement, Plaintiff, Fairfield General Corporation, was required to pay Defendant a percentage of its gross income, subject to certain specified limits.

4. At various times since March of 1972, the accountin and bookkeeping functions of Fairfield General Corporation, Plaintiff, were performed and such records as may have been created thereby were kept at the offices of the Defendant.

5. The aforesaid Management Services due and owing to Plaintiff, Fairfield General Corporation, were not fully performed and, to the extent performed, were not adequate.

6. Subsequent to March, 1972, officers and directors of the Defendant, who were to provide Management Services to Plaintiff, Fairfield General Corporation, pursuant to the Management Services Agreement, ceased affiliation with Plaintiff Fairfield General Corporation.

7. The charges made by Defendant and payments made by Plaintiff, Fairfield General Corporation, pursuant to the Management Services Agreement, have not been accounted for to Plaintiff, Fairfield General Corporation.

WHEREFORE, Plaintiff, Fairfield General Corporation, demands Judgment against the Defendant as follows:

(a) That the Defendant be required to render an accounting for all charges made by the Defendant pursuant to th Management Services Agreement;

(b) That Defendant be required to pay to Plaintiff, Fairfield General Corporation, all monies or charges paid in

excess of the reasonable value of the services rendered pursuant to the Management Services Agreement to Plaintiff, Fairfield General Corporation.

(c) That the Defendant be required to pay all costs of this suit including fees, disbursements and counsel fees;

(d) That the Court grant such other relief as may be just and proper.

THIRD COUNT

1. Plaintiffs repeat each and every allegation of the foregoing Counts and makes them a part hereof as if set forth at length herein.

2. Plaintiff, Fairfield Aviation Corporation, was a party to a Contract with Defendant, whereby Plaintiff, Fairfield Aviation Corporation, was to provide air-taxi services to personnel of Defendant. This Contract is hereinafter referred to as the "Air-taxi Services Contract."

3. Pursuant to this Air-taxi Services Contract, Defendant was obligated to pay to Plaintiff, Fairfield Aviation Corporation, a minimum annual charge of $78,000.00.

4. On February 1, 1973, this Agreement was modified and terminated, effective September 30, 1972.

5. Pursuant to this modification, Defendant was to pay all past due charges through the effective termination date of September 30, 1972.

6. Additionally, pursuant to this modification, amounts then due and owing to Plaintiff, Fairfield Aviation Corporation, pursuant to the original Air-taxi Services Contract through September 30, 1972 would be subject to a credit in favor of the Defendant to the extent of fifty (50%) percent of the costs incurred by the Defendant in using other helicopter services through September 30, 1972 in lieu of those services offered by the Plaintiff, Fairfield Aviation Corporation.

7. At various times since March of 1972, the account and bookkeeping functions of Plaintiff, Fairfield Aviation Corporation, were performed, and such records as may have been created thereby were kept, at the offices of the Defendant.

8. The payments made by the Defendant and charges for costs to be credited to the amounts due and owing to Plaintiff, Fairfield Aviation Corporation, by the Defendant pursuant to the Air-taxi Services Agreement have not been accounted for to Plaintiff, Fairfield Aviation Corporation.

WHEREFORE, Plaintiff, Fairfield Aviation Corporation demands Judgment against the Defendant as follows:

(a) That the Defendant be directed to account to Plaintiff, Fairfield Aviation Corporation, for Defendant's utilization of the services offered by Plaintiff, Fairfield Aviation Corporation, pursuant to the Air-taxi Services Contract through September 30, 1972;

(b) That Defendant be required to account for all such credits to the aforesaid amount due and owing to Plaintiff, Fairfield Aviation Corporation, by reason of the costs incurred by the Defendant in the utilization of air-taxi services other than those provided by the Plaintiff, Fairfield Aviation Corporation;

(c) That Defendant be required to pay all amounts due and owing to Plaintiff, Fairfield Aviation Corporation, pursuant to the Air-Taxi Services Contract and the termination agreement thereof.

(d) That the Defendant be required to pay all costs of this suit including fees, disbursements and counsel fees;

(e) That the Court grant such other relief as may be just and proper.

SHANLEY & FISHER
Attorneys for Plaintiffs

By: S. J. Millicent Bas[illegible]

AFFIDAVIT

STATE OF NEW JERSEY:
SS.:
COUNTY OF :

I, JOEL GRADY, of full age, being duly sworn according to law upon my oath, depose and say:

1. I am a Vice-President and Director of Plaintiff, Fairfield General Corporation. I am President and a Director of Plaintiff, Fairfield Aviation Corporation. I am President and a Director of Plaintiff, Skyways Leasing Corporation.

2. I have read the annexed Verified Complaint and the facts as set forth therein are true to the best of my knowledge, information and belief.

Joel Grady

Sworn to and Subscribed
before me this day
of , 1973.

Affidavit

Affidavit of Laurence B. Richardson, Jr., sworn to June 7, 1973.

(116a - 120a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, NORMAN LeBLANC, STANLEY GRAZE, MILTON F. MEISSNER, ULRICH J. STRICKLER, RICHARD E. CLAY, WILBERT J. SNIPES, FREDERICK J. WEYMAR, GILBERT R. J. STRAUB, C. HENRY DUHL III, RALPH P. DODD, ALWYN EISENHAUER, GEORGE PHILLIPS, JOEL GRADY, SHIRLEY BAILEY, VESCO & CO., IOS LTD., BAHAMAS COMMONWEALTH BANK, INTERNATIONAL BANCORP, KILMOREY INVESTMENTS LTD., VALUE CAPITAL LTD., GLOBAL HOLDINGS LTD., GLOBAL FINANCIAL LTD., BUTLERS BANK, LTD. (now known as WHO HOLDINGS LTD.), ALLAN J. BUTLER, BANK CANTRADE LTD., FAIRFIELD AVIATION CORPORATION, FAIRFIELD GENERAL CORPORATION, SKYWAYS LEASING CORPORATION and MARINE MIDLAND BANK,

Defendants.

AFFIDAVIT OF LAURENCE B. RICHARDSON, JR.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LAURENCE B. RICHARDSON, JR., being duly sworn, deposes and says:

1. I was elected President and Chief Operating Officer and Director of International Controls Corp. ("ICC") on December 10, 1970 and became Acting Chief Executive Officer of ICC on September 25, 1972. I resigned as President and Acting Chief Executive Officer of ICC on February 5, 1973. I resigned as a Director of ICC following entry of a Final Judgment of Permanent Injunction entered on March 16, 1973 in the action entitled Securities and Exchange Commission v. Robert L. Vesco et al. I submit this affidavit at the request of ICC in connection with its motion for a temporary order

restraining certain defendants herein from selling, encumbering, or otherwise disposing of certain assets of defendants Robert Vesco, Vesco & Co., Fairfield General Corporation ("Fairfield General"), Fairfield Aviation Corporation ("Fairfield Aviation"), and Skyways Leasing Corporation ("Skyways").

2. In June 1971, Skyways, a sub-subsidiary of ICC, purchased a Boeing 707 aircraft (the "Boeing 707"), for the personal use of defendant Vesco. I and certain of the other directors of ICC questioned such purchase, but was advised by Vesco that the Boeing 707 would cost ICC nothing as it was being used solely for activities on behalf of defendant IOS, Ltd. and ICC would be fully reimbursed by IOS. I later discovered that Vesco's representations were incorrect and, for example, in late 1972 I realized that ICC would have to incur substantial unreimbursable expenses in connection with it, which may be as high as $1,000,000 for the use of the Boeing 707 during 1972. Vesco concealed from me and from other members of the ICC Board of Directors that (i) there was a plan to refurbish the Boeing 707 to Vesco's specifications in a lavish and unbusinesslike manner which would render it commercially useless at a cost of $350,000 (in fact even the $350,000 cost proved to be a gross understatement); (ii) ICC would be liable to pay the cost of this refurbishing; (iii) the lease which he planned to have ICC enter into with defendant Skyways for the period (the "707 lease") would commit ICC to more than $1,000,000 of lease payments for which [illegible] had, in fact, no assurance of reimbursement; and (iv) Skyways had the option to cancel the lease on five days notice and thereby retain the lease-

3. The lavish renovations of the Boeing 707, which included a discotheque with a bar and a sauna, actually ended up costing in excess of $600,000. I did not know, and, upon information and belief, none of the other directors of ICC except Vesco and defendants Ralph P. Dodd, Richard E. Clay and Frank E. Beatty (other Fairfield Aviation directors) knew of the nature or the cost of the renovations. Vesco never sought to obtain nor did he ever obtain authorization from the ICC Board of Directors for such renovations.

4. The minutes of the 82nd meeting of the Board of Directors of ICC held on December 8, 1971 ("the 82nd meeting") purport to ratify cash advances from ICC to Fairfield of more than $700,000 to consider such advances as a contribution to the capital of Fairfield, and the 707 lease. I was not present at the 82nd meeting, but I was present at the meetings of the ICC board both prior to and subsequent to such meeting and was in almost daily contact with members of the board of ICC, including defendant Vesco. Despite these contacts, I was not advised of these matters which were purportedly discussed and decided at this meeting until I saw a copy of the minutes of this meeting at a later date. The minutes of the 82nd meeting did not disclose material provisions of the 707 lease, including termination and modification provisions. Article V of the 707 lease provides that Skyways may terminate the lease at its option in the event of the transfer of ownership of the Boeing 707 on five days prior written notice to ICC. Article VIII of the 707 lease provides that any alterations, modifications, additions or improvements to the Boeing 707 made by ICC would become the property of Skyways. Not only were these key elements of the 707 lease not included in the minutes of the

82nd meeting, but on information and belief, they were never disclosed to the members of the board present at such meeting.

5. I would not have voted to ratify the 707 lease; the advance of funds to Skyways; or the dividend of Fairfield General stock had I known the terms of the lease; the nature of the refurbishment; and the fact that ICC had no assurance of reimbursement.

Laurence B. Richardson

LAURENCE B. RICHARDSON, JR.

Sworn to before me this
7th day of June, 1973

Mary Ann Verra

MARY ANN VERRA
NOTARY PUBLIC, State of New York
No. 41-4600589
Qualified in Queens County
Commission Expires March 30, 1974

Affidavit of Malcolm McAlpin, sworn to June 7, 1973.

(121a - 125a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, NORMAN LeBLANC, STANLEY GRAZE, MILTON F. MEISSNER, ULRICH J. STRICKLER, RICHARD E. CLAY, WILBERT J. SNIPES, FREDERICK J. WEYMAR, GILBERT R. J. STRAUB, C. HENRY BUHL III, RALPH P. DODD, ALWYN EISENHAUER, GEORGE PHILLIPE, JOEL GRADY, SHIRLEY BAILEY, VESCO & CO., IOS LTD., BAHAMAS COMMONWEALTH BANK, INTERNATIONAL BANCORP, KILMOREY INVESTMENTS LTD., VALUE CAPITAL LTD., GLOBAL HOLDINGS LTD., GLOBAL FINANCIAL LTD., BUTLERS BANK, LTD. (now known as WHO HOLDINGS LTD.), ALLAN J. BUTLER, BANK CANTRADE LTD., FAIRFIELD AVIATION CORPORATION, FAIRFIELD GENERAL CORPORATION, SKYWAYS LEASING CORPORATION and MARINE MIDLAND BANK,

Defendants.

INDEX # 73 CIV 251 (CES)

AFFIDAVIT OF MALCOLM McALPIN

----------x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MALCOLM McALPIN, being duly sworn, deposes and says:

1. I was elected a director of International Controls Corp. ("ICC") prior to 1969 and served as such until I resigned following entry of a Final Judgment of Permanent Injunction entered on March 16, 1973 in the action entitled Securities and Exchange Commission v. Robert L. Vesco et al. I submit this affidavit at the request of ICC in connection with its motion for an order restraining certain defendants from selling, encumbering or otherwise disposing of certain assets of defend-

Corporation ("Fairfield General"), Fairfield Aviation Corporation ("Fairfield Aviation") and Skyways Leasing Corporation ("Skyways").

2. In June 1971 Skyways, a sub-subsidiary of ICC, purchased a Boeing 707 aircraft (the "Boeing 707"). I subsequently became aware of this, but neither I nor the Board of Directors of ICC as an entity were asked to take any action with respect thereto at least prior to December 8, 1971.

3. A lease was entered into as of October 1, 1971 between Skyways and ICC (the "707 lease") providing for the payment by ICC of substantially all of the cost and expense of the Boeing 707, including rental payments by ICC to Skyways of more than $3,500,000 over a five year period. I became aware of the 707 lease some time after it was entered into, but neither I nor the Board of Directors of ICC as an entity were asked to take any action with respect thereto at least prior to December 8, 1971.

4. Some time prior to October 29, 1971, a plan for major refurbishment of the Boeing 707 was conceived by defendant Vesco. I was not informed or advised of the existence of this plan until some time thereafter and subsequent to December 8, 1971, or that ICC was incurring liability therefor. I was aware that there were to be certain modifications of the Boeing 707 but believed they were of a minor nature.

5. On December 8, 1971, according to the minutes of the Board of Directors of ICC, there was a meeting at which the Board was presented with the proposal to approve a dividend in kind of the common stock of Fairfield Aviation. According to those minutes the Board was also presented with the proposal

to ratify certain advances to Fairfield Aviation which were used to purchase the Boeing 707 and to ratify the 707 lease between ICC and Skyways.

6. At or about the time of that meeting the Board of Directors was assured by defendant Vesco that the Boeing 707 had been in fact purchased for the use of I.O.S. Ltd. ("IOS"); that IOS would be responsible for reimbursing all of its expenses in connection with the Boeing 707; that the IOS reimbursement would cover the full cost of the Boeing 707; and that there was a possibility of Skyways making a profit by that and other leasing activities.

7. Prior to the December 8, 1971 meeting defendant Vesco had not disclosed to me the facts with respect to the refurbishment of the Boeing 707, which was proposed to cost $350,000, and in fact cost more than $700,000. These facts were not disclosed at or about the time of the Board meeting held on December 8, 1971. At a later date I was shocked to hear of these facts. The Board of Directors of ICC was never asked to ratify or approve such refurbishment.

8. Prior to the December 8, 1971 meeting defendant Vesco had not disclosed to me the terms of the 707 lease with Skyways which included the right of termination on five days notice, the ownership by Skyways of all modifications made to the Boeing 707, while the cost therefor was charged to ICC. The facts with respect to the termination clause and the modification provision of the 707 lease were not disclosed to me or to the Board at or about the meeting held on December 8, 1971.

9. At the Board meeting on December 8, 1971, according to the minutes, the Board was asked to ratify the fait

accompli of the advance of funds for the purchase of the Boeing 707 and the 707 lease. I have no recollection of such discussion at such meeting or of ever having voted for these matters. I do not believe that I would have voted to ratify such advancing of funds or such 707 lease had the facts with respect to the refurbishment and the termination and modification provisions of the 707 lease, as aforesaid, been disclosed to me. In any event, I should have been told of these facts, but I was not told. Furthermore, I do not believe that I would have voted in favor of the dividend in kind of Fairfield General stock if these facts had been disclosed to me.

MALCOLM McALPIN

Sworn to before me this
7th day of June, 1973

Notary Public

GRACIE V. LEELIEM
Notary Public, State of New York
No. 41-9391391
Qualified in Queens County
Commission Expires March 30, 1974

Affidavit of Allen Shinn, sworn to June 7, 1973.

(126a - 143a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP.,

Plaintiff

-against-

ROBERT L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, NORMAN LeBLANC, STANLEY GRAZE, MILTON F. MEISSNER, ULRICH J. STRICKLER, RICHARD E. CLAY, WILBERT J. SNIPES, FREDERIC J. WEYMAR, GILBERT R. J. STRAUB, C. HENRY BUHL III, RALPH P. DODD, ALWYN EISENHAUER, GEORGE PHILLIPE, JOEL GRADY, SHIRLEY BAILEY, VESCO & CO., I.O.S. LTD., BAHAMAS COMMONWEALTH BANK, INTERNATIONAL BANCORP, KILMOREY INVESTMENTS LTD., VALUE CAPITAL LTD., GLOBAL HOLDINGS LTD., GLOBAL FINANCIAL LTD., BUTLERS BANK LTD. (now known as WHO Holdings Ltd.), ALLAN J. BUTLER, BANK CANTRADE LTD., FAIRFIELD AVIATION CORPORATION, FAIRFIELD GENERAL CORPORATION, SKYWAYS LEASING CORPORATION and MARINE MIDLAND BANK,

Defendants.

INTER # 73 CIV 2518 (CES)

AFFIDAVIT OF

ALLEN SHINN

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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ALLEN SHINN, being duly sworn, deposes and says:

1. I am President of International Controls Corp. ("ICC"), plaintiff in this action; I am one of the five directors of ICC appointed by the court pursuant to the terms of a Final Judgment of Permanent Injunction entered on March 16, 1973 in the action entitled Securities and Exchange Commission v. Robert L. Vesco, ICC et al (the "SEC lawsuit") 73 Civ.5001 (CES). I became a director on March 28, 1973 and was elected as President and Chief Executive Officer of ICC on April 25, 1973.

2. I submit this affidavit in support of ICC's motion for a preliminary order enjoining defendants Robert L.

Vesco ("Vesco"), Vesco & Co., Skyways Leasing Corporation ("Skyways"), Fairfield General Corporation ("Fairfield General"), Fairfield Aviation Corporation ("Fairfield Aviation"), Frank G. Beatty ("Beatty"), Joel Grady ("Grady") and Alwyn Eisenhauer ("Eisenhauer") directly or indirectly from using, selling, encumbering or otherwise disposing of the following properties without the approval of the court:

(i) 846,380 shares of common stock of ICC held of record by defendant Vesco & Co.;

(ii) 122,463 shares of common stock of ICC held of record by defendant Vesco;

(iii) common stock of defendant Fairfield General owned or controlled by defendants Vesco and Vesco & Co.;

(iv) capital stock of defendant Fairfield Aviation, a wholly-owned subsidiary of defendant Fairfield General;

(v) capital stock of defendant Skyways, a whol - owned subsidiary of defendant Fairfield Aviation;

(vi) a Boeing 707 (registered number N11RV) (the "Boeing 707") title to which is in defendant Skyways, or the proceeds of the sale of the Boeing 707 if it has already been sold, or any other moneys or assets of defendants Fairfield General, Fairfield Aviation or Skyways; and

(vii) any and all other assets or property of such companies.

3. Upon information and belief, the properties above referred to constitute the only substantial assets of defendants

Vesco, Vesco & Co., Fairfield General, Fairfield Aviation and Skyways that could be levied upon to satisfy a final judgment in this action. Plaintiff ICC has a substantial claim against these defendants. The established facts show that these defendants have defrauded and looted plaintiff ICC in violation of Section 10(b) of the Securities and Exchange Act of 1934 and their common law and fiduciary obligations. However, a final judgment will be worthless if these defendants are permitted to spirit the remaining assets beyond the reach of ICC and this court. These defendants have already removed from the United States the Boeing 707 and the assets of ICC's subsidiaries. Vesco himself is a fugitive from justice living in a foreign country.

4. Defendant Vesco owns or controls approximately 24.5% of the common stock of ICC and was until some time prior to March 1973 the dominant and controlling person of ICC. He was a director of ICC until February 1973; Chairman of the Board and Chief Executive Officer until September 1972; and, among other things, a director of defendants Fairfield General and Fairfield Aviation which, upon information and belief, he still dominates and controls. After being named as a defendant in the SEC lawsuit defendant Vesco left the United States and has not returned. Defendant Vesco was also indicted on May 10, 1973 by a special Federal Grand Jury in the Southern District of New York; upon information and belief he attempted to avoid service of process by an Assistant United States Attorney; on May 21, 1973 he failed to appear to plead to the criminal indictment and is a fugitive from justice. Upon information and belief, defendant Vesco has declared his intention to renounce his United States citizenship to become a citizen of Costa Rica in order to evade the jurisdiction of the courts of the United States.

5. Plaintiff ICC is a Florida corporation which has its principal place of business in Fairfield, New Jersey; its common stock and warrants are listed on the American Stock Exchange; it is engaged in diverse businesses with plants and offices in various parts of the United States.

6. Defendant Fairfield General, a New Jersey corporation, was organized on or about November 19, 1971 as a wholly-owned subsidiary of ICC; on or about December 9, 1971 defendant Fairfield General acquired all of the outstanding stock of defendant Fairfield Aviation, a New Jersey corporation, which had been a wholly-owned subsidiary of ICC and at that time purportedly was engaged in the general aviation business. Defendant Skyways, a New Jersey corporation, was and is a wholly-owned subsidiary of defendant Fairfield Aviation.

7. The resulting corporate structure was ICC, 24.4% owned by defendant Vesco; Fairfield General, a wholly-owned subsidiary of ICC; Fairfield Aviation, a wholly-owned subsidiary of Fairfield General; and Skyways, a wholly-owned subsidiary of Fairfield Aviation. Upon information and belief, the sole business of defendant Fairfield General is the ownership of the capital stock of defendant Fairfield Aviation, whose sole business is the ownership of the capital stock of defendant Skyways, whose sole business is the ownership and operation of the Boeing 707.

8. Defendants Beatty and Richard E. Clay ("Clay") are, among other things, officers and directors of defendants Fairfield General, Fairfield Aviation and Skyways; upon information and belief defendant Beatty is the chief executive officer of defendants Fairfield General and Fairfield Aviation. Defendant Grady is, upon information and belief, the chief executive officer of defendant Skyways. Defendant Eisenhauer

is the principal pilot of the Boeing 707 and, upon information and belief, is the personal pilot of defendant Vesco.

9. Upon information and belief, beginning in 1970 Vesco and other defendants embarked upon a scheme to use the assets of ICC and its subsidiaries to obtain for their own personal benefit, separate and apart from ICC and at the expense of ICC, the control and use of defendant I.O.S. Ltd. ("IOS") and related companies (the "IOS assets"), and of other assets of ICC and its subsidiaries, including the Boeing 707, all at the expense and to the injury of ICC.

THE BOEING 707

10. In January 1972 ICC distributed all of the common stock of Fairfield General as a dividend in kind to its stockholders. A prospectus dated January 17, 1972 of Fairfield General (the "Fairfield Prospectus") which was included in a Registration Statement (No. 2-42586) filed by Fairfield General with the Securities and Exchange Commission, was distributed in connection with that dividend.

11. The Fairfield Prospectus sets forth at page 10 the following facts with respect to the Boeing 707:

(a) The Boeing 707 was purchased on June 15, 1971 from Pan American World Airways, Inc. ("Pan American") by Skyways. (The Fairfield Prospectus defines "the Company" to include Fairfield General, Fairfield Aviation and Skyways so that it is not certain which of the three companies it refers to. Your deponent has supplied the name of the correct company where known.) The Boeing 707 was purchased at a price of $1,375,000 excluding certain modifications and interest charges of which $343,750 was paid (with funds contributed to Skyways by ICC) upon delivery with the balance payable in twenty

quarterly installments of $66,152 including 10% interest, commencing September 13, 1971, and Fairfield General incurred obligations totaling up to $350,000 in connection with refurbishing the interior of the Boeing 707. During the three months ended September 30, 1971, Skyways leased the Boeing 707 to ICC at a total cost to ICC of $439,000; pursuant to an agreement dated as of October 1, 1971 (the "707 lease"), ICC leased the Boeing 707 for a period of five years at a monthly rental of $100,000 for each of the months of October, November and December 1971, $83,000 per month for each of the months January through December 1972, and $47,000 per month for each of the months January 1973 through September 1976; and in addition to such rentals, the 707 lease provides that ICC shall be responsible for the cost and supervision of all aspects of the Boeing 707 including service, maintenance, overhaul, scheduling and personnel.

(b) The Fairfield Prospectus also sets forth other facts with respect to Fairfield General and its subsidiaries, viz., that they have a history of operating losses in every year since December 31, 1968; that they have a deficit in retained earnings; that if the revenues and expenses relating to the Boeing 707 were excluded, they would have a net loss for the nine months ended September 30, 1971 of $110,000; that they are dependent upon the 707 lease payments from ICC in order to meet their obligations for the Boeing 707; and that there is no assurance that an active public market for the Fairfield General stock will develop by reason of this dividend in kind.

(c) A copy of the Fairfield Prospectus is annexed

hereto marked Exhibit A and made a part hereof.

(d) A copy of the 707 lease is annexed hereto marked Exhibit B and made a part hereof.

12. The Boeing 707 is a large airplane which commercially carries approximately 150 passengers. ICC, a relatively small company, is the only public company in the world not engaged in commercial aviation which I know of which has a Boeing 707 aircraft. The Fairfield Prospectus states that the Fairfield airport facilities are not equipped or authorized to accommodate a 707 aircraft and cannot be extended to accommodate such aircraft, and that Fairfield General and its subsidiaries have no employees licensed or authorized to operate a 707 aircraft. Most of the trips made by the Boeing 707 during 1972 were made with fewer than ten passengers to destinations served by major commercial airlines. (Annexed hereto marked Exhibit C is a schedule indicating the date of each flight made by the Boeing 707 during 1972, the points of departure and arrival, and the number of persons on each flight.) If first-class tickets on commercial airlines had been utilized for such trips, the aggregate cost to ICC would have been approximately $220,000 instead of more than $2,300,000 actually spent by ICC for flights of the Boeing 707 during 1972.

13. The Fairfield Prospectus misstated and concealed the true facts with respect to refurbishing of the Boeing 707. It stated that the cost of refurbishment was limited to $350,000 when in fact it cost more than $600,000. It concealed the fact that the refurbishment was designed to satisfy the personal taste of defendant Vesco and would convert the Boeing 707 into a pleasure palace and rendered commercially useless by decreasing its capacity to thirty-three seats. The renovations included a discotheque area with a wooden dance floor,

a bar and "entertainment center" (including a stereo receiver, tape deck, rythmic lighting, a wine rack and a movie screen and projector); a master bedroom; a guest bedroom; a sauna and soaking bath and shower facility. (A copy of the specifications for the renovations of the Boeing 707 are annexed hereto marked Exhibit D.)

14. The facts and purpose relating to the purchase of the Boeing 707 were not only concealed from the public, but also from the Board of Directors of ICC. I have been advised by counsel that the minutes of the ICC Board of Directors prior to December 8, 1971 do not disclose any discussion, authorization or approval of the 707 lease between ICC and Skyways, the commitments or the advance of funds of ICC to Skyways for the purchase of the Boeing 707. Thus, without authorization by the Board of Directors of ICC, more than $1,000,000 in cash was advanced to Fairfield General and its subsidiaries by ICC which was committed to a five year lease with rental payments aggregating more than $3,500,000.

15. The minutes of the 82nd meeting of the Board of Directors of ICC held on December 8, 1971 purport to ratify the cash advances of more than $1,000,000 and the five year lease committing ICC to rental payments aggregating more than $3,500,000. However, this belated ratification was obtained by concealing from the Board the facts with respect to the refurbishment. Affidavits of Messrs. McAlpin and Richardson, submitted in support of this motion, state that they would not have voted to ratify the 707 lease had they known the facts with respect to the refurbishment. I have been advised by counsel that the minutes of the Board of Directors of ICC nowhere contain discussion, approval or ratification of the refurbishing of the Boeing 707 or advancing funds therefor.

16. A copy of the minutes of the 82nd meeting is annexed hereto marked Exhibit E and made a part hereof.

17. Both the Fairfield Prospectus and the minutes of the 82nd meeting concealed material provisions of the 707 lease, i.e., the termination and modification provisions of the 707 lease which were key elements in the plan of Vesco to convert the Boeing 707 to his own use. Moreover, it appears, upon information and belief, that the references in the minutes of the 82nd meeting to the ratification of the 707 lease was false and that the 707 lease was, in fact, never reviewed by the Board. Article V of the 707 lease entitled "Termination" provides:

> "This Agreement may be terminated at the option of Skyways in the event of sale or transfer of ownership of the aircraft on five (5) days' prior written notice . . ."

Article VIII of the 707 lease entitled "Modification" provides:

> "Subject to the terms of this Agreement Lessee shall have the right to alter, modify or make additions and improvements to the Aircraft . . . Any such alterations, modifications, additions, or improvements to the Aircraft shall become the property of Skyways . . ."

Messrs. McAlpin and Richardson both state in their affidavits submitted in support of this motion that, had they known the facts with respect to the termination rights and ownership of modifications, they would not have voted to ratify the 707 lease.

18. The Fairfield Prospectus states at page 4 that the reason for the dividend in kind of the Fairfield General stock was because "the general aviation business did not fit into the operations of any of the reconstituted subsidiaries [of ICC]". This statement is misleading and the reason given is false. ICC is in fact an extraordinary diverse company whose various businesses bear little relationship to one another. (Annexed hereto marked Exhibit F is a description of the various businesses in which ICC is engaged.) These include the manufacture

of microwave relays, the manufacture of high precision forgings for the aircraft industry, a plant nursery, an aluminum die making shop, a company engaged in preparation of manuals for the Army, the manufacturing of bomb and missile casings, the manufacture of steel poles for electrical transmission, the manufacture of aircraft arresting equipment, a garbage disposal engineering facility, etc. With this diverse product mix, little of which fits with any other part, either conceptually or operationally, it is obviously dishonest to state that the general aviation business was being spun off simply because it did not fit with any other business of ICC. That statement is a transparent attempt to conceal the true purpose of the dividend in kind, viz., to convert the Boeing 707 to defendant Vesco's personal use and control.

19. In addition, it was concealed from the public, and even the Board of Directors, that the dividend in kind was never properly authorized by the Board of Directors of ICC. The facts are as follows:

The minutes of the 82nd meeting state at page 3:

> "RESOLVED that the dividend in kind of one share of Common Stock of Fairfield Aviation Corporation for each ten outstanding shares of Common Stock of International Controls Corp. declared by the Board of Directors of International Controls Corp. on November 13, 1971, is hereby modified by substituting one share of Common Stock of Fairfield General Corporation in place of one share of Common Stock of Fairfield Aviation Corporation as such dividend in kind for each ten outstanding shares of Common Stock of International Controls Corp."

Counsel has advised me that there was in fact no meeting of directors on November 13, 1971. A search of the minutes shows a consent of directors dated November 13, 1970 purporting to declare a dividend in kind of one share of common stock of Fairfield Aviation for each ten outstanding shares of common

stock of ICC payable to holders of record of ICC on December 4, 1970. The validity of this consent, the only consent in ICC's minute books during the past two years, I am informed by counsel, is questionable. However in any event, no dividend was ever paid pursuant to this resolution. (A copy of one counterpart of the consent dated November 13, 1970 is annexed hereto marked Exhibit G.)

20. The Fairfield Prospectus states at page 5 that the dividend in kind was modified by ICC on December 9, 1971. Counsel has advised me that they find no minutes for a meeting on December 9, 1971. If the 82nd meeting held on December 8, 1971 is the meeting relied on, it fails to properly authorize a dividend because it does not provide any record date. Indeed, counsel has requested Marine Midland Bank ("Marine Midland") to search its files for any authorization of the dividend in kind to holders of record on February 7, 1972 and has been advised by Marine Midland that it is unable to find any such authorization or opinion of counsel with respect to such dividend. This is not surprising since there was no proper authorization of the dividend in kind by the Board of Directors of ICC. Marine Midland paid the dividend in kind by mailing it from its office in New York. (A letter dated May 9, 1973 from Marine Midland advising of this is annexed hereto marked Exhibit H.)

21. The failure to properly authorize the dividend in kind cannot be explained as a mere ministerial or technical omission. Reasonable care would have been expected even if ICC had been leading a normal corporate existence in December of 1971. However, ICC was the target of an intensive investigation by the Securities and Exchange Commission. Reasonable care would have been expected even if the dividend in kind were a normal dividend. But the dividend in kind resulted in a

spin-off of more than $1,000,000 of ICC's former assets without putting any true value in the hands of the shareholders of ICC other than defendant Vesco. Fairfield General's principal purpose was to fly defendant Vesco from place to place in consummate luxury (an enterprise not calculated to attract investors) and the Fairfield Prospectus stated that its shares were not expected to have an active market or pay dividends. Based upon a recent over-the-counter quotation of 6¢ per share the total market value of the Fairfield General stock is approximately $25,000. Reasonable care certainly would be expected from eminent counsel and, eminent counsel was much in evidence. Present at the meeting when the Fairfield General dividend in kind was declared were Charles J. Egan, Jr., the General Counsel of ICC, Sherwin J. Markman, [illegible]ember of the firm of Hogan & Hartson, and Merle Thorpe, Jr., a member of the Board of Directors of ICC at that time and also a member of the firm of Hogan & Hartson. More than $640,000 was paid to lawyers in legal fees by ICC during 1972, the year in which the dividend in kind was paid. Thus, the fact that the dividend was not duly authorized cannot be dismissed as mere oversight or negligence but constitutes a badge of fraud upon a transaction conceived and executed in fraud.

22. In February 1973 this court in the SEC lawsuit ordered that ICC be restrained and enjoined from disbursing and disposing of any of its funds and assets other than in the regular course of business. Payments for the Boeing 707 were specifically defined as not being in the ordinary course of the business. On March 9, 1973 defendant Grady, who well knew the reason why ICC was making no payment, sent a letter to Elmer Sticco, then President of ICC, saying that he trusts that the failure to make rent payments for February and March and payments

to Qualitron "were an oversight" and that payments would be made promptly. On March 9, 1973 he also sent a letter to Mr. Sticco stating that he desired to sell the Boeing 707 but that it was subject to a lien because of the lavish refurbishment. (Copies of these letters are annexed hereto marked Exhibits I and J.) On March 12, 1973 Skyways delivered a letter to Mr. Sticco giving notice of default. Defendants Beatty and Grady advised counsel to ICC that they desired to demonstrate the Boeing 707 to a potential purchaser. On March 21, 1973 ICC by letter to Skyways, attention defendant Grady, advised Skyways that (as it well knew) ICC was under an injunction that prohibited payment for the Boeing 707; that a settlement of the ICC case was in prospect in a few days; that a new court appointed Board and special counsel would be able to review the matter and make any payments that were due in a few days. (A copy of that letter is annexed hereto marked Exhibit K.) Upon learning that ICC was about to settle the litigation with the SEC resulting from the wrongdoing of the defendants in this action, defendant Grady purported to terminate the 707 lease.

23. On March 7, 1973 plaintiff ICC entered into an agreement with defendant Eisenhauer pursuant to which defendant Eisenhauer agreed to fly the Boeing 707 at ICC's request for all flights which ICC deems necessary while the Boeing 707 is leased and under the control of ICC. (A copy of that agreement is annexed hereto marked Exhibit L.) Pursuant thereto plaintiff ICC instructed defendant Eisenhauer to fly the Boeing 707 to Newark and paid defendant Eisenhauer expense money to do so. Defendants Grady and Beatty wrongfully instructed defendant Eisenhauer, and defendant Eisenhauer complied, to fly the Boeing 707 to Beirut and thence to Nassau. This was done secretly, without prior notice, despite the fact that

negotiations were then being conducted between defendants Grady, Beatty and counsel to ICC. As stated by defendant Eisenhauer, the pilot of the Boeing 707, in his letter to the SEC, the Boeing 707 has been kept out of the United States since that date and has been continuously used by Vesco and other defendants herein. (Annexed hereto marked Exhibit M are letters dated May 3, 1973 and May 4, 1973 from defendant Eisenhauer to the Securities and Exchange Commission detailing flights made by the Boeing 707 subsequent to March 17, 1973 and listing the passengerson such flights.

24. Defendants Beatty and Grady have informed counsel to ICC that Skyways was attempting to sell the Boeing 707. Upon information and belief, attempts to sell the Boeing 707 have continued to the present time.

25. The dividend in kind of the Fairfield General stock with the Boeing 707 as its principal asset was an element in the more elaborate scheme to violate the securities laws and defraud ICC's shareholders which involved among other things the IOS assets and self-dealing by the individual defendants. Indeed, the original plan for the dividend contemplated that Fairfield Aviation would be the vehicle by which Vesco would acquire control of certain of the IOS assets separate and apart from ICC. (Annexed hereto marked Exhibit N is letter dated November 25, 1970 from Robert M. Jeffers of Hogan & Hartson to Ralph C. Hocker, Associate Director, Division of Corporation Finance of the Securities and Exchange Commission.) It states in paragraph 2 that:

> "After the proposed spinoff, ICC would offer to Fairfield an option to acquire all of the shares of ICC Investments Limited ("IIL"), a Bahamian subsidiary of ICC which has entered into a financing arrangement with IOS described in the ICC registration statements presently on file with the SEC. The terms and purchase price of such option have not yet been determined but would be the subject of negotiations between Fairfield and ICC after the spinoff. ICC regards this proposed transaction as a means not only of disposing of

another unrelated business activity but also of disengaging itself from relationships with IOS which, as suggested in our meeting, might give rise to objections by the SEC."

The Fairfield Prospectus states at page 13 that in November 1970 ICC announced that it was negotiating with Fairfield General to grant Fairfield General an option to purchase all of the stock of IIL. These negotiations were discontinued in December 1970 without any agreement having been reached and without any present intention to resume negotiations. The minutes of the meeting of the Board of Directors held on April 27, 1972, after the dividend in kind, state that "among the alternatives discussed was the possible sale by the Corporation [ICC] of its minority interests in International Bancorp Limited and Value Capital Limited to Fairfield General. It was requested that this be investigated by the corporate staff using outside counsel and accounting firm advice". The minutes of the meeting of June 2, 1972 of ICC report that ICC would sell its stock interest in International Bancorp Limited and Value Capital Limited and certain promissory notes of Value Capital, Kilmorey Investments Limited, Hemispheres Financial Services Ltd. and IIL to Global Financial Limited and that an earlier proposal to sell such assets to Fairfield General had been abandoned. (A copy of an extract from these minutes of June 2, 1972 is annexed hereto marked Exhibit O.)

26. ICC will prove at trial that corporate waste, self-dealing and breach of fiduciary obligations accompanied and were integral parts of the fraudulent schemes hereinabove described.

27. On November 1, 1968, defendants Vesco and Bailey caused a check to be issued by ICC in the amount of $25,000 and converted into five Treasurer's checks in the amount of

$5,000 each which they then dispatched to the Nixon-Agnew Finance Committee with directions that the funds be allocated to five designated committees. (The letter designating the allocations and the five Treasurer's checks as well as the ICC check which was used to purchase the five Treasurer's checks are attached and marked Exhibit P.) I am advised by counsel that such a political contribution by ICC was not a proper corporate use of funds but was illegal.

28. During the year 1972, defendant Vesco caused ICC to pay legal fees to Harry Sears in the amount of $60,000 and $26,000 in the form of an overdraft at American National Bank & Trust Company by Sears which was paid to the Bank by ICC. According to the indictment of defendant Vesco referred to above:

> "16(d) In or about December 1971 and January 1972, defendant Robert L. Vesco would and did pay and promise to pay defendant Harry L. Sears substantial sums of money in return for Sears requesting defendant John N. Mitchell to exert his influence on the SEC on behalf of Robert L. Vesco, ICC, IOS and others."

Upon information and belief the sums of money referred to in the quoted portion of the indictment were the ICC funds paid to Harry Sears referred to above.

29. ICC believes that extraordinary circumstances here require preliminary relief. The principal defendant is a fugitive from justice living outside of the United States to avoid the jurisdiction of the courts and the principal asset, the Boeing 707, has been removed from the United States. In addition, The Wall Street Journal, in an article on June 6, 1973, reported that Fairfield General has announced an agreement for the sale of the Boeing 707 and such sale may have been consummated. (A copy of The Wall Street Journal article is attached and marked Exhibit Q hereto.) We have also been advised that Skyways has recently proposed to deposit $2,000,000 in certificates of deposit in London, presumably representing anticipated or realized proceeds

om the disposition of the Boeing 707. Moreover, a Vesco lative has within the past several weeks attempted to purchase ares of Fairfield General at prices above the current market, esumably anticipating that the stock will have value as a sult of the disposition of the Boeing 707.

30. For the foregoing reasons it is respectfully re- ested that this court grant a preliminary injunction and, nding a hearing upon the matter, a temporary restraining der as set forth in paragraph 2 hereof.

Allen Shinn

orn to before me this
day of June, 1973.

Notary Public

[illegible] 31-3-1401
[illegible] in New York County
[illegible] Expires March 30, 19[illegible]

Exhibits to Affidavit of Allen Shinn, sworn to June 6, 1973.

(144a - 295a)

EXHIBITS TO AFFIDAVIT
OF ALLEN M. SHINN

Exhibit A

PROSPECTUS

379,831 Shares

Fairfield General Corporation

Common Stock

(Without Nominal or Par Value)

This Prospectus covers 379,831 shares of Common Stock of Fairfield General Corporation, a New Jersey corporation (the "Company"), to be distributed by International Controls Corp., a Florida corporation ("ICC"), as a dividend in kind to its stockholders of record on February 7, 1972 (the "ICC record date") on the basis of one share of the Company's Common Stock for each ten shares of ICC common stock held on the ICC record date. The Company's shares will be distributed on or after February 23, 1972 and will constitute all of the then issued and outstanding shares of the Company's Common Stock. This dividend of the Company's Common Stock will be distributed to ICC stockholders without any consideration being paid to ICC and without any exchange of shares by the ICC stockholders. The amount of the distribution may be taxable as a dividend. See "Dividend of the Company's Common Stock". All expenses incurred in connection with the distribution, estimated at $70,000, will be paid by ICC.

Unless the context otherwise requires, the term "Company" as used herein includes Fairfield General Corporation, its wholly-owned subsidiary, Fairfield Aviation Corporation and Skyways Leasing Corporation, a wholly-owned subsidiary of Fairfield Aviation Corporation. All operations of the Company are conducted through Fairfield Aviation Corporation and Skyways Leasing Corporation.

After completion of the distribution, Robert L. Vesco will beneficially own 92,896 shares of Common Stock of the Company and his four minor children will beneficially own an aggregate of 4,638 shares. Mr. Vesco presently intends to give, sell or otherwise transfer all or substantially all of his 92,896 shares to separate irrevocable trusts for his four minor children. Mr. Vesco may be deemed to be an "underwriter" within the meaning of the Securities Act of 1933 with respect to such shares. See "Principal Stockholders".

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

For information describing special risks concerning the Company see "Introductory Statement," page 3.

The date of this Prospectus is January 17, 1972

No dealer, salesman or any other person is authorized by the Company to make any representation other than as contained in this Prospectus in connection with this offering. This Prospectus does not constitute an offer of any security other than the registered securities to which it relates, or an offer in any jurisdiction to any person to whom such offer would be unlawful. The delivery of this Prospectus at any time does not imply that information herein is correct as of any time subsequent to the date hereof.

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This Prospectus does not contain all the information set forth in the Registration Statement which the Company has filed with the Securities and Exchange Commission, Washington, D. C. For further information with reference to the Company, reference is made to the Registration Statement including the exhibits thereto.

Until May 23, 1972 all dealers effecting transactions in the registered securities may be required to deliver a prospectus.

INTRODUCTORY STATEMENT

The following risk factors should be considered concerning the Company:

1. The shares of Common Stock of the Company are speculative. There is no assurance that an active public market for the Company's Common Stock will develop by reason of this dividend in kind.

2. The Company has a history of operating losses. Such operating losses (before Federal income tax credits realized or to be realized by ICC for which ICC reimbursed the Company and before extraordinary gains) amounted to approximately $53,000, $29,000, $79,000 and $12,000 for the years ended December 31, 1968, 1969, and 1970 and the nine months ended September 30, 1971, respectively. On a pro forma basis giving effect to the dividend in kind, the Company would have had net losses of approximately $44,000, $39,000, $83,000 and $34,000 for the years ended December 31, 1968, 1969 and 1970 and the nine months ended September 30, 1971, respectively. At September 30, 1971 the Company had a deficit in retained earnings of approximately $35,000. See Consolidated Statements of Operations and Consolidated Statement of Retained Earnings (Deficit).

Including the results of leasing to ICC the Boeing 707 referred to below, the Company had for the three months ended September 30, 1971 net sales and rental income of approximately $699,000 and income before provision for Federal income taxes of $120,000. If the revenues and expenses related to the Boeing 707 were excluded, the Company would have had for the three months ended September 30, 1971 net sales and rental income of approximately $[illegible]60,000 and income before provision for Federal income taxes of $22,000, and for the nine months ended September 30, 1971 net sales and rental income $714,000 and a loss of $110,000. The Company's operations are also seasonal to some extent with revenues generally greater during the summer months. See "Business—Boeing 707".

3. Revenues from the Company's business will be dependent in part upon the continuation of its Franchise Agreement with Cessna Aircraft Company and its Distributor's Agreement with Robertson Aircraft Corporation. The Franchise Agreement is cancellable at Cessna's election if the Company fails to develop adequately and to Cessna's satisfaction the sales and service of new Cessna aircraft, parts and accessories. There is no assurance that the Company will be able to achieve this development. The Distributor's Agreement provides, as a condition of continuance, that the Company make minimum quarterly purchases from Robertson. To date, the Company has made all such required minimum purchases. There is no assurance, however, that the Company's sales will be sufficient to enable it to make such minimum purchases in the future.

4. The Company leases its airport facilities from Curtis-Wright Corporation pursuant to a lease which expires April 30, 1973 and which provides that the lessor may terminate it at any time upon twelve months prior written notice. There is no assurance that this lease will be renewed or that it will not be terminated.

5. In addition to general business conditions, the Company's business may be affected from time to time by weather conditions, new developments in air and surface travel and other hazards inherent in the general aviation business.

6. Each of the officers and directors of the Company is an officer and director of ICC and devotes only a small portion of his time to the affairs of the Company. The Company has agreed to reimburse ICC for the services of such officers and directors pursuant to the terms of a management services agreement. See "Certain Transactions".

7. In the past ICC has made substantial loans and capital contributions to the Company (see "Certain Transactions"). After the dividend in kind, ICC will cease to be a stockholder of the Company and will be unable to make future capital contributions to finance the Company's operations. ICC does not presently intend to make any further loans to the Company after the dividend in kind.

8. The Company leases its aircraft for air taxi and air charter services. In recent years ICC has been a substantial user of such services on a cost reimbursement basis. ICC agreed as of January 1, 1971 to lease or purchase air taxi services from the Company through April 30, 1973 with a minimum annual rental of $78,000 for such services. On June 15, 1971 the Company purchased a Boeing 707 from Pan American World Airways, Inc. ("Pan American") for $1,375,000 of which $1,031,251 is being financed by 20 quarterly mortgage payments of $66,152, including interest at 10%, to Pan American. The first two payments due September 13 and December 13, 1971 have been made when due. ICC has leased the Boeing 707 from the Company for five years; payments under the lease are intended to cover the Company's costs related to the Boeing 707 and the mortgage payments. The Company is dependent upon the lease payments from ICC in order to meet such obligations. See "Business—Boeing 707" and "Certain Transactions".

In 1970 ICC undertook the reorganization of its manufacturing operations into three publicly-held subsidiary companies. The general aviation business did not fit into the operations of any of the reconstituted subsidiaries. As a result, ICC decided in November 1970 to dispose of the Company through a dividend in kind to ICC stockholders. Distribution of the dividend in kind was delayed because of the need for an effective registration statement under the Securities Act of 1933. ICC elected to distribute the Common Stock of the Company as a dividend in kind, since if publicly-held the Company would be in a better position to grow through merger and acquisition. The Company is not presently a party to any negotiations, understandings or agreements involving any merger or acquisition.

DIVIDEND OF THE COMPANY'S COMMON STOCK

ICC has declared a dividend in kind of all of the outstanding shares of the Company's Common Stock to be distributed to holders of record of ICC common stock on the ICC record date on the basis of one share of the Company's Common Stock for each ten shares of ICC common stock. The Company's Board of Directors has determined that no fractional shares will be distributed and has authorized the payment of cash for fractional share interests based on the book value of the Company's Common Stock at September 30, 1971. Accordingly, upon the transfer by ICC of the Company's Common Stock to holders of ICC common stock who would otherwise have received fractional share interests in the Company (as a result of owning a number of shares of ICC common stock not evenly divisible by 10), such holders will be paid cash in lieu of such fractional share interests based upon the $2.64 book value per share of the Company's Common Stock at September 30, 1971. The shares of the Company's Common Stock to be distributed by ICC as a dividend in kind will constitute all of the then issued and outstanding shares, and ICC will at the time own no shares of the Company's Common Stock. See "Principal Stockholders".

For Federal income tax purposes the distribution by ICC of the Company's Common Stock (and any rights to receive cash in lieu of fractional shares) will be treated as a distribution of property, and the amount of the distribution will be taxable as a dividend to the stockholders of ICC to the extent that ICC has either earnings and profits for the taxable year of the distribution (ending December 31, 1972) or accumulated earnings and profits on the date of the distribution. In the case of ICC stockholders who are individuals, the amount of the distribution will be the fair market value of the Company's Common Stock (and of such rights to receive cash) as of the date of the distribution. In the case of corporate stockholders of ICC, the amount of the distribution will be the lesser of the fair market value of the Company's Common Stock (and of such rights to receive cash) as of the date of distribution or its adjusted basis in the hands of ICC. If ICC does not have sufficient earnings and profits (current or accumulated) to require taxation of the distribution as a dividend, the amount of the distribution will be treated (to the extent it exceeds earnings and profits) as a return of capital to ICC's stockholders, nontaxable to the extent of their basis for their ICC stock, and taxable as capital gains (long-term or short-term, depending on the period the ICC stock has been held) to the extent that the amount of the distribution exceeds their basis for their ICC common stock. In the event that it is determined that ICC has current or accumulated earnings and profits, so as to require all or part of the distribution to be treated as a dividend, ICC will furnish to its stockholders, as required by applicable Federal tax provisions, copies of information returns filed with respect to the distribution.

THE COMPANY

Fairfield Aviation Corporation (the Company's principal subsidiary) was incorporated in New Jersey on October 27, 1965. By agreement dated October 31, 1966, Caldwell Flight Service Inc., a corporation organized on December 29, 1964 under the laws of the state of New Jersey, and Oakley's Aircraft Service, Inc., a corporation organized on June 23, 1965 under the laws of the state of New Jersey, were merged into Fairfield Aviation Corporation. On October 18, 1967, ICC acquired all of the issued and outstanding shares of Fairfield Aviation Corporation.

In November 1970 ICC declared a dividend in kind of all of the outstanding shares of Fairfield Aviation Corporation. In order to provide a holding company corporate structure for the company which would become publicly-held as a result of the dividend in kind, ICC organized Fairfield General Corporation on November 19, 1971 under the laws of the State of New Jersey and on December 9, 1971 transferred all of the outstanding shares of Fairfield Aviation Corporation to Fairfield General Corporation. As a result, Fairfield Aviation Corporation is a wholly-owned subsidiary of Fairfield General Corporation and the dividend in kind, as modified by ICC on December 9, 1971, will consist of the 379,831 shares of Fairfield General Corporation owned by ICC.

The Company's principal executive offices are at 171 Passaic Avenue, Fairfield, New Jersey 07006, telephone (201) 227-6610.

USE OF PROCEEDS

The Company will not receive any proceeds from the dividend in kind of its Common Stock to the ICC stockholders.

CAPITALIZATION

The following table sets forth the consolidated capitalization of the Company as of September 30, 1971. All debt shown is an obligation of Fairfield Aviation Corporation or Skyways Leasing Corporation.

Title of Class	Amount Outstanding
Short-term debt:	
Current portion of various aircraft instalment notes(a)	$ 92,932
Current portion of 10% first mortgage notes on Boeing 707(b)	171,830
Payable to International Controls Corp.	49,306
Total short-term debt	$ 314,068
Long-term debt:	
Instalment notes on various aircraft, less current portion(a)	174,000
Note payable to International Controls Corp.(c)	200,000
10% first mortgage notes on Boeing 707, less current portion(b)	819,050
Total long-term debt	$1,193,050
Stock(d):	
Serial Preference Stock, $.10 par value, authorized 500,000 shares	None
Common stock, no par value, authorized 10,000,000 shares	379,831 shs.

(a) See Notes 3 and 4 of Notes to Consolidated Financial Statements with respect to instalment notes.

(b) Issued to Pan American in the principal amount of $1,031,250 as payment for the balance of the purchase price for the Boeing 707. Payable in 20 quarterly instalments of $66,152 (including interest) commencing September 13, 1971 (see "Business--Boeing 707"). See Note 4 of Notes to Consolidated Financial Statements.

(c) See Note 5 of Notes to Consolidated Financial Statements.

(d) See Note 1 of Notes to Consolidated Financial Statements as to the retroactive effect given to the formation of Fairfield General Corporation and the issuance of its stock.

(e) For information concerning lease obligations, see Note 6 of Notes to Consolidated Financial Statements.

FAIRFIELD GENERAL CORPORATION AND SUBSIDIARIES (Note 1)

CONSOLIDATED STATEMENTS OF OPERATIONS

The following consolidated statements of operations of Fairfield General Corporation and Subsidiaries (the "Company") include the operations of businesses acquired in transactions treated for accounting purposes as poolings of interests as explained in Note 1 of Notes to Consolidated Financial Statements, included elsewhere in this Prospectus. The statements for the fourteen months ended December 31, 1967 and the three years ended December 31, 1970 have been examined by Lybrand, Ross Bros. & Montgomery, independent certified public accountants, whose report thereon is included elsewhere in this Prospectus. The statements for the year ended October 31, 1966, and the nine months ended September 30, 1970 and 1971 are unaudited but include all adjustments (consisting only of normal recurring accruals) necessary for a fair presentation of the results of operations. The statements should be read in conjunction with the other financial statements and notes thereto appearing elsewhere in this Prospectus.

	Year Ended October 31,	Fourteen Months Ended December 31,	Year Ended December 31,			Nine Months Ended September 30,	
	1966	1967	1968	1969	1970	1970	1971
	(Unaudited)					(Unaudited)	(Unaudited)
Net sales and rental income	$294,743	$780,192	$972,338	$1,060,983	$910,906	$715,025	$1,153,001
Cost of sales and expenses(A)	226,723	696,535	885,611	941,977	856,080	650,358	1,045,268
Operating income	68,020	83,657	86,727	119,006	54,826	64,667	107,733
Selling, general and administrative expenses	29,783	91,011	67,655	79,527	79,107	53,347	74,779
Interest expense, net	8,539	11,256	34,105	34,596	34,772	21,943	59,946
Management and interest charges from International Controls Corp.(B)			42,312	37,298	31,276	23,354	18,120
Other income, net(C)	(269)	(5,458)	(3,928)	(3,173)	(11,044)	(9,116)	(32,90)
	38,053	96,809	140,144	148,248	134,111	89,528	119,938
Income (loss) before credit for Federal income taxes and extraordinary gains	29,967	(13,152)	(53,417)	(29,242)	(79,285)	(24,861)	(12,205)
Credit for Federal income taxes(D)		3,900	13,500	14,600	39,600	12,400	6,100
Income (loss) before extraordinary gains	29,967	(9,252)	(39,917)	(14,642)	(39,685)	(12,461)	(6,105)
Extraordinary gains(E)	37,500			6,700	3,300	3,300	
Net income (loss)	67,467	(9,252)	(39,917)	(7,942)	(36,385)	(9,161)	(6,105)
Pro forma adjustments:							
Elimination of tax reimbursements from International Controls Corp.(D)		(3,900)	(13,500)	(14,600)	(39,600)	(12,400)	(6,100)
Elimination of extraordinary tax credits(E)				(6,700)	(3,300)	(3,300)	
Management charges from International Controls Corp:							
Elimination of amounts previously charged			29,292	10,616	16,236	14,514	
Pro forma amounts in accordance with management services agreement (F)			(20,000)	(20,610)	(20,000)	(15,000)	(21,530)
Pro forma net income (loss)	$ 67,467	($ 13,152)	($ 44,125)	($ 39,236)	($ 83,049)	($ 25,347)	($ 33,735)
Per share of common stock (G):							
Income (loss) before extraordinary gains	$ .08	($ .02)	($ .11)	($ .04)	($ .11)	($ .03)	($ .02)
Extraordinary gains	.10			.02	.01	.01	
Net income (loss)	.18	(.02)	(.11)	(.02)	(.10)	(.02)	(.02)
Pro forma adjustments		(.01)	(.01)	(.08)	(.12)	(.05)	(.06)
Pro forma net income (loss)	$ .18	($ .03)	($ .12)	($ .10)	($ .22)	($ .07)	($ .08)

See accompanying notes to consolidated statements of operations.

NOTES TO CONSOLIDATED STATEMENTS OF OPERATIONS

(A) Includes rent expense for leased airport property of $33,200, $56,400, $92,100, $103,300, $108,027, $79,040 and $71,858 for the year ended October 31, 1966, the fourteen months ended December 31, 1967, the years ended December 31, 1968, 1969 and 1970, and the nine months ended September 30, 1970 and 1971, respectively. See Note 6 of Notes to Consolidated Financial Statements for information with respect to the lease. See "Certain Transactions", included elsewhere in this Prospectus for information relating to certain costs of the Company which were reimbursed by ICC.

(B) Includes interest at rates ranging from 7% to 10% on the outstanding principal amount of demand notes to ICC of $13,020, $26,682, $15,040, $8,840 and $18,120 for the three years ended December 31, 1970 and the nine months ended September 30, 1970 and 1971, respectively. See Note 5 of Notes to Consolidated Financial Statements with respect to notes issued to ICC by the Company. Net income for the nine months ended September 30, 1971 includes no management charges from ICC.

(C) Includes net gain on disposition of aircraft of $269, $3,175, $2,772, $920, $9,166, $7,306 and $23,493 for the year ended October 31, 1966, the fourteen months ended December 31, 1967, the years ended December 31, 1968, 1969 and 1970 and the nine months ended September 30, 1970 and 1971, respectively.

(D) Commencing October 18, 1967 the Company participated in the filing of consolidated Federal income tax returns with ICC. The credits for Federal income taxes for the periods subsequent to October 18, 1967 represent the tax benefits realized or to be realized by ICC arising from the inclusion of the Company's tax losses in the consolidated Federal income tax returns for which ICC has reimbursed the Company. On a separate company basis such credits could not have been utilized by the Company.

The provisions for Federal income taxes for the Company separately and a pooled company for the year ended October 31, 1966, were eliminated through utilization of investment credits of approximately $8,100.

(E) Extraordinary gains comprise:

	Year Ended			Nine Months Ended
	October 31, 1966	December 31, 1969	December 31, 1970	September 30, 1970
Retirement of outstanding indebtedness at discount from principal amount	$37,500			
Tax credits arising from utilization of net operating loss carryforwards(D)		$6,700	$3,300	$3,300
	$37,500	$6,700	$3,300	$3,300

(F) For information with respect to a management services contract with ICC and amounts to be incurred thereunder see "Certain Transactions"

(G) Per share amounts for all periods shown are based on 379,831 shares outstanding. See Notes 1 and 7 of Notes to Consolidated Financial Statements.

The decline in net sales and rental income and increased loss for the year ended December 31, 1970 resulted primarily from the continued decrease in aircraft sales attributable to the general economic decline, the limited availability to potential purchasers of bank financing and reduced general aviation activity.

Results of operations for the nine months ended September 30, 1971 include rentals of approximately $439,000 and income before Federal income taxes of $98,000 arising from the lease of the Boeing 707 to ICC and $23,000 of net gains on dispositions of aircraft used in the Company's operations. The loss before Federal income taxes from other operations was $133,000 for such period compared with $32,000 for the nine months ended September 30, 1970. The increased loss from other operations

during the 1971 period resulted primarily from the continued decrease in new aircraft sales attributable to the general economic decline and rentals of aircraft representing a lesser portion of available aircraft rental hours as a result of unfavorable general economic conditions. The results of operations for the nine months ended September 30, 1971 are not necessarily indicative of results for the full year. Based upon preliminary estimates, management believes there has been no material adverse change in operations for the year ended December 31, 1971 as compared with the nine months ended September 30, 1971.

DIVIDEND POLICY

The Company has not paid any dividends to date and the payment of dividends, if any, in the future will depend on earnings and the financial condition of the Company.

BUSINESS

The Company operates under lease a general aviation airport in Fairfield, New Jersey. The Company is engaged in airplane fueling, parking, storage, repair and maintenance activities, provides air taxi and air charter services, operates flight and ground schools, and is a dealer for Cessna Aircraft and a distributor for Robertson Aircraft Corporation STOL products. Under the agreement with Robertson, the Company is the modification center in the mid-Atlantic area for the installation of "STOL" kits which modify the wing structure of aircraft to improve flight characteristics and efficiency and reduce the distances required for take-offs and landings. The Company has also recently acquired a Boeing 707 which it leases to ICC. See "Boeing 707".

The Company's flight training school is approved by the Veterans Administration (VA) and the Federal Aviation Agency (FAA) and offers courses leading to Private Pilot, Commercial Pilot, Instrument Pilot, Instructor Pilot, Instrument Instructor Pilot, Multi-Engine Pilot, and Air Transport Pilot ratings. The Company also offers VA and FAA approved ground school courses and owns a flight simulator.

The Company operates an FAA approved repair station for Beech, Piper and Cessna aircraft. The Company is also approved by the FAA to conduct 100 hour and periodic aircraft inspections, and air frame and engine overhaul and repair on other aircraft. In addition, certain of the Company's sub-tenants are approved by the FAA for avionic and instrument repair.

The Company presently owns the following aircraft, each of which is subject to a conditional sales contract or mortgage with the exception of the Jet Ranger.

No. of Aircraft	Make	Model No.	Use
6	Cessna	150	Training and Rental
1	Cessna	172	Training and Rental
2	Cessna	177	Training and Rental
1	Cessna	182	Training, Rental, Air Taxi and Charter
1	Cessna	310	Training, Rental, Air Taxi and Charter
1	Cessna	337	Training, Rental, Air Taxi and Charter
1	Bell	Jet Ranger	Rental and Air Taxi
1	Boeing	707	Leased

The aircraft are all well maintained and the Company believes they are suitable for the Company's present operations.

The Company's wholly-owned subsidiary, Skyways Leasing Corporation, a New Jersey corporation ("Skyways"), began operating an aircraft leasing and air taxi business on January 1, 1971. As of September 30, 1970 ICC contributed to Skyways a Bell Jet Ranger five place helicopter, a Grand Commander 680 eight place twin engine aircraft, and a de Havilland twin engine DHC-series 200 twenty-one place STOL aircraft (subject to a conditional sales contract), for use in Skyways' aircraft leasing and air-taxi service. The Grand Commander and the de Havilland were sold to persons unaffiliated with either the Company or ICC for cash of approximately $55,000 and $218,000, respectively. The transactions resulted in a loss after related Federal income tax benefit of approximately $3,750 on the Grand Commander and a gain after provision for related Federal income taxes of approximately $14,500 on the de Havilland. See "Certain Transactions".

The following table shows sales and rental income data for each operation having sales or rental income in excess of 10% of the Company's total revenues for the periods indicated. The percentages set forth in the table do not necessarily reflect the amounts contributed by such operations to operating income or income (loss) before Federal income taxes.

	Fourteen Months Ended December 31, 1967		Year Ended December 31, 1968		1969		1970		Nine Months Ended September 30, 1970		1971	
	Revenues	%	Revenues	%	Revenues	%	Revenues	%	Revenues	%	Revenues	%
Sales:												
Aircraft	$341,317	43.7%	$320,696	33.0%	$ 271,752	25.6%	$125,071	13.7%	$107,280	15.0%	$ 75,663	6.6%
Maintenance and repairs	47,935	6.1	118,193	12.2	156,000	[illegible]	210,309	23.1	159,252	22.3	173,033	15.0
Flight and ground school instruction	89,793	11.5	112,552	11.6	139,371	13.2	133,701	14.7	104,901	14.7	91,123	7.9
Fuel and lubricants	72,177	9.3	108,959	11.2	136,128	12.8	151,392	16.6	116,485	16.3	115,365	10.0
Other	30,994	4.0	48,480	4.9	57,519	5.4	32,665	3.6	31,838	4.4	8,195	.7
Total	582,216	74.6	709,180	72.9	760,770	71.7	653,138	71.7	519,706	72.7	463,379	40.2
Rental income:												
Aircraft	101,763	13.1	135,456	14.0	147,122	13.9	97,022	10.7	78,664	11.0	574,465	49.6
Hangar and parking space	74,274	9.5	97,484	10.0	124,242	1.7	134,892	14.8	96,524	13.5	102,650	8.9
Offices and concessions	21,939	2.8	30,218	3.1	28,849	2.7	25,854	2.8	20,131	2.8	12,507	1.1
Total	197,976	25.4	263,158	27.1	300,213	28.3	257,768	28.3	195,319	27.3	689,622	59.8
Company total	$780,192	100.0%	$972,338	100.0%	$1,060,983	100.0%	$910,906	100.0%	$715,025	100.0%	$1,153,001	100.0%

For information with respect to certain decreases in aircraft sales and fluctuations in aircraft rental income during 1970 and the nine months ended September 30, 1971, see the two paragraphs following the Notes to Consolidated Statements of Operations.

Affidavit

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At December 14, 1971 the Company had 26 full-time employees and 27 part-time employees: 1 full-time manager, 2 full-time and 12 part-time pilots, 1 full-time aircraft salesman, 4 full time and 6 part-time line servicemen, 12 full-time FAA licensed mechanics, 4 full-time and 4 part-time clerical employees, 3 part-time tower employees and 2 full-time and 2 part time custodians. The Company's employees are not unionized. The Company considers its relations with its employees to be good.

The Company considers the general aviation business to be highly competitive. It considers a fixed base airport operation in Morristown, New Jersey to be its principal competitor. Other fixed base operators at Teterboro, New Jersey and Newark, New Jersey provide certain of the services provided by the Company, but generally those operators serve larger aircraft.

Boeing 707

On June 15, 1971, the Company purchased a Boeing 707 airplane from Pan American at a price, excluding certain modifications and interest charges, of $1,325,000 of which $343,750 was paid (with funds contributed to the Company by ICC) upon delivery of the airplane with the balance payable in twenty quarterly instalments of $66,152, including 10% interest, commencing September 13, 1971. The Company has granted Pan American a first mortgage on the Boeing 707 as security for its obligation. In addition, the Company has incurred obligations totaling up to $350,000 in connection with refurbishing the interior of the Boeing 707. See "Aircraft Insurance" below for insurance coverage with respect to the Boeing 707.

During the three months ended September 30, 1971, the Company leased the Boeing 707 to ICC at a total cost to ICC of $425,000. Pursuant to an agreement dated as of October 1, 1971, ICC has leased the Boeing 707 from the Company for a period of five years at a monthly rental of $100,000 for each of the months of October, November and December, 1971; $83,000 per month for each of the months January through December, 1972; and $47,000 per month for each of the months January, 1973 through September, 1976. In addition to such rentals, the lease provides that the lessee shall be responsible for the cost and supervision of all aspects of the operation of the Boeing 707, including service, maintenance, overhaul, scheduling and personnel. The Company anticipates that rental payments under such lease will provide the funds with which it can meet its obligations in connection with the purchase, refurbishing and ownership of the Boeing 707.

The Company's airport facilities are not equipped or authorized to accommodate 707 aircraft and cannot be expanded to accommodate such aircraft. The Company has no employees licensed or authorized to operate a 707 aircraft. Under the lease, ICC has the responsibility for cost of basing the Boeing 707 and for providing its operating personnel. The Boeing 707 is presently based by ICC at the Newark, New Jersey airport.

The Company's ownership of the Boeing 707 is pursuant to the provisions of 14 CFR Part 91. Since, under the lease agreement ICC has complete control of, and is solely responsible for the cost and supervision of all aspects of the operation of the Boeing 707, the Company is not required to obtain a commercial operator's license under 14 CFR Part 121 or any other approvals from the FAA or Civil Aeronautics Board.

Aircraft Insurance

The Company maintains insurance on its aircraft against the following risks in the indicated amounts:

(a) liability for claims for bodily injury to persons other than passengers—$250,000 per person but not to exceed a total of $500,000 coverage against all claims arising out of any one occurrence; (b) liability for claims for property damage, but not to exceed $250,000 coverage for all claims arising out of any one occurrence; and (c) liability for claims for bodily injuries to passengers, but not to exceed $1,000,000 for all claims arising from any one occurrence.

The Company maintains insurance against damage to its aircraft (Hull risk insurance) subject to the following limitations: (a) aircraft with a value of $10,000 or less are insured only for ground coverage; (b) a deductible equal to 10% of the value of the aircraft, but not to be less than $500 nor more than $1,000; (c) a maximum of $400,000 for any one occurrence.

In addition, the Company maintains separate coverage on the Boeing 707 at an annual premium of approximately $125,000 as follows: (a) Hull and War Risk---$1,375,000, subject to deductibles of $60,000 for each in flight occurrence and $2,500 for each ground occurrence; and (b) combined single limit bodily injury and property damage---$20,000,000.

PROPERTY

Fairfield Aviation Corporation ("Aviation") leases its airport facilities from Curtiss-Wright Corporation. These facilities consist of approximately 200 acres including two paved runways which are 4,200 feet and 4,700 feet, respectively, in length. The 4,700 foot runway is lighted for night operations. The airport has limited facilities for instrument approaches and a control tower which furnishes traffic control direction on Saturdays, Sundays and certain holidays. The airport facilities also include two free span hangars of 110' x 130', one tower building with offices and a restaurant, and T-Hangars of semi-permanent sheet metal construction for storage of 20 small aircraft. Aviation subleases to others certain space in the buildings.

The airport lease expires April 30, 1973 and provides that the lessor may terminate it at any time upon 12 months prior written notice. It provides that the Aviation shall pay an annual rent equal to the greater of a minimum payment or a percentage of the Aviation's annual gross revenues. The following table sets forth such minimum amounts for the indicated periods, and the amount of rent paid to the lessor for such periods.

Period	Minimum Annual Rent	Per Cent of Annual Gross Revenues	Rent Paid
July 1, 1967 to April 30, 1968	$61,671	13%	$ 45,600
May 1, 1968 to April 30, 1969	71,796	13½%	106,300
May 1, 1969 to April 30, 1970	76,800	14%	102,100
May 1, 1970 to April 30, 1971	81,792	14½%	106,672
May 1, 1971 to April 30, 1972	86,796	15%	40,151*
May 1, 1972 to April 30, 1973	91,800	15½%	—

* Rent paid through September 30, 1971.

PRINCIPAL STOCKHOLDERS

This Prospectus covers the distribution of all outstanding shares of the Company's Common Stock by ICC as a dividend in kind to its stockholders. ICC will then own no shares of the Company's Common Stock. Based on the shares of ICC common stock outstanding on October 31, 1971, the following table sets forth the amount of the Company's Common Stock after the dividend in kind to be owned by each person who, to the knowledge of the Company, will own of record or beneficially more than 10% of the Company's Common Stock and by all officers and directors of the Company as a group.

Name and Address	Type of Ownership	After Dividend in Kind: Shares Owned	After Dividend in Kind: % of Class
Robert L. Vesco 200 Fairfield Road Fairfield, New Jersey 07006	Record and beneficial	92,896	24.5%
	Record but not beneficial(a)	4,638	1.2%
Officers and Directors of the Company as a group	Beneficial	103,318	27.2%

(a) Beneficially owned by minor children of Mr. Vesco.

Mr. Vesco presently intends to transfer (in equal amount) all or substantially all of the 92,896 shares of the Company's Common Stock to be owned by him after the dividend in kind to separate irrevocable trust which he and his wife created for their four minor children, Daniel William Vesco, Anthony Donald Vesco, Dawn Lee Vesco and Robert Bruce Vesco. The trustees for each of such trusts are Shirley B. Bailey, Richard E. Clay and Ralph P. Dodd, c/o 200 Fairfield Road, Fairfield, New Jersey 07006. With respect to Messrs. Clay and Dodd, see "Management". Mrs. Bailey is Secretary of ICC.

As of October 31, 1971, Robert L. Vesco owned 928,963 shares (24.5%) of the common stock of ICC of record and beneficially and 46,380 shares (1.2%) of record but not beneficially.

MANAGEMENT

Directors and Executive Officers

Ralph P. Dodd	President and Director
Frank G. Beatty	Vice President, Treasurer and Director
Richard E. Clay	Vice President, Secretary and Director
Robert L. Vesco	Director

Mr. Dodd has been a Vice President of ICC for the past five years and a Director since February 1, 1971. Mr. Dodd became Vice President and a Director of the Company on November 16, 1970 and was elected President on June 4, 1971.

Mr. Vesco has been Chief Executive Officer (as President until December 10, 1970 and as Chairman of the Board thereafter) and a Director of ICC for the past five years. Mr. Vesco became a Director of the Company on November 16, 1970. Mr. Vesco is Chairman of the Board of Directors, Chairman of the Finance Committee and a member of the Executive Committee of the Board of Directors of IOS, Ltd.

Mr. Beatty became Executive Vice President—Administration and Finance and Treasurer of ICC on August 1, 1969 and a Director on August 7, 1969. From 1961 to July 31, 1969 Mr. Beatty had been a partner of Lybrand, Ross Bros. & Montgomery, certified public accountants. Mr. Beatty became Vice President, Treasurer and a Director of the Company on November 16, 1970.

Mr. Clay has been a Vice President of ICC for the past five years and a Director since February 1, 1971. Mr. Clay became Vice President, Secretary and a Director of the Company on November 16, 1970. Mr. Clay is President of Investment Properties International, Limited, a real estate investment company controlled by IOS, Ltd.

Remuneration of Directors and Officers

During the fiscal year ended December 31, 1970, no director or officer of the Company received aggregate direct remuneration in excess of $30,000 and all directors and officers of the Company as a group received aggregate direct remuneration from the Company in the aggregate direct amount of $16,140. The principal occupations of the officers and directors of the Company listed above are as officers and directors of ICC. They devote only a small portion of their time to the Company's affairs and receive no compensation from the Company. After the dividend in kind, the Company expects to reimburse ICC for the services of such officers and directors pursuant to the terms of a management services agreement (see "Certain Transactions"). The Company has no stock option, pension, profit sharing, deferred compensation or retirement plans.

Affidavit

CERTAIN TRANSACTIONS

Messrs. Dodd, Beatty and Clay are directors and officers of both the Company and ICC. Mr. Vesco is a director of the Company and a director and officer of ICC. As of October 31, 1971, Mr. Vesco owned 928,963 shares (24.5%) of the common stock of ICC of record and beneficially and 46,380 shares (1.2%) of record but not beneficially. See "Principal Stockholders".

As of September 30, 1970 ICC contributed three aircraft having an aggregate market value of approximately $363,000 (before assumed debt of approximately $183,000) to Skyways as described under the caption "Business". Two of such aircraft have since been sold to persons totally unrelated to the Company or ICC. As of January 1, 1971, Skyways agreed to make aircraft available to ICC upon request through April 30, 1973 and ICC agreed to lease or purchase air taxi service from Skyways, with a minimum annual payment of $78,000 for such services. For the nine months ending September 30, 1971, ICC paid the Company $58,500 pursuant to such contract. Such payments are at estimated rates prevailing in the industry for the particular service provided. In the past, the Company has rendered certain services to ICC, including aircraft maintenance and leasing, on a cost reimbursement basis. The approximate amount of such reimbursements for the three years ended December 31, 1970 were $1,300, $36,000, $24,000, respectively.

See "Business—Boeing 707" with respect to the lease by the Company of the Boeing 707 to ICC.

As of June 30, 1971 Skyways issued a $200,000 7% unsecured note due September 15, 1976 to ICC in exchange for cash received on August 16, 1971.

As of June 30, 1971, ICC contributed the following to the capital of the Company: a $320,000 face amount 7½% note of the Company issued to ICC as of September 30, 1970, $343,750 advanced to Skyways by ICC and used in connection with the purchase of the Boeing 707 and $100,410 representing current amounts due ICC by the Company as at June 30, 1971.

The Company has entered into an agreement with ICC pursuant to which it will, for the period commencing on the date of the distribution of the dividend in kind and ending on April 30, 1973, reimburse ICC for the services rendered to the Company by Messrs. Vesco, Dodd, Beatty and Clay at an annual rate equal to 2% of the first $1,000,000 gross receipts earned in any calendar year, plus 1% of all gross receipts earned in any calendar year in excess of such $1,000,000 but in no event shall such reimbursement be less than $20,000 per year nor more than $50,000 per year.

In November 1970, ICC announced that it was negotiating with the Company to grant the Company an option to purchase all of the stock of ICC's wholly-owned Bahamian subsidiary, ICC Investments Limited. Those negotiations were discontinued in December, 1970 without any agreement having been reached. There have been no further negotiations since that time and there is no present intention to resume negotiations.

DESCRIPTION OF THE COMPANY'S STOCK

Each share of Common Stock is entitled to one vote on any matter submitted to the stockholders, to equal dividend rights and to equal rights in the assets of the Company available for distribution to holders of Common Stock upon liquidation. The holders of Common Stock have no preemptive rights and the Common Stock has no redemption, sinking fund or conversion provisions. All of the outstanding shares of Common Stock and the shares offered hereby are fully paid and non-assessable. The Transfer Agents for the Company's Common Stock are Marine Midland Bank—New York and American National Bank & Trust.

The Company's Certificate of Incorporation authorizes 500,000 shares of Serial Preference Stock and authorizes the Board of Directors to designate series and to determine by resolution the dividend, redemption, voting, liquidation or other preferences of each such series. To date no series of Serial

Preference Stock has been designated by the Board of Directors. However, any Serial Preference Stock that may be issued may have preference over the Common Stock offered hereby with respect to dividends, redemption, voting and/or liquidation rights.

PENDING LITIGATION

There are no material legal proceedings currently pending against the Company.

LEGAL OPINIONS

Legal matters in connection with the securities offered hereby have been passed upon for the Company by Hogan & Hartson. Merle Thorpe, Jr., who is a partner of Hogan & Hartson, is a director of ICC.

EXPERTS

The audited financial statements of the Company included in this Prospectus and the related supporting schedules included in the Registration Statement have been examined by Lybrand, Ross Bros. & Montgomery, independent certified public accountants. The financial statements and the supporting schedules referred to above have been included in this Prospectus and in the Registration Statement in reliance upon the report of said firm and upon the authority of said firm as experts in accounting and auditing.

REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors
FAIRFIELD GENERAL CORPORATION:

We have examined the consolidated balance sheet of Fairfield General Corporation and Subsidiaries as of December 31, 1970, the related statements of operations and of retained earnings (deficit) for the fourteen months ended December 31, 1967 and the three years ended December 31, 1970, and the statements of source and application of funds for the three years ended December 31, 1970. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the aforementioned financial statements present fairly the consolidated financial position of Fairfield General Corporation and Subsidiaries at December 31, 1970, the results of their operations for the fourteen months ended December 31, 1967 and the three years ended December 31, 1970 and the source and application of their funds for the three years ended December 31, 1970, in conformity with generally accepted accounting principles applied on a consistent basis.

LYBRAND, ROSS BROS. & MONTGOMERY

Newark, New Jersey
February 5, 1971, except as to paragraphs 1 and 2 of Note 1 which is December 9, 1971.

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FAIRFIELD GENERAL CORPORATION AND SUBSIDIARIES (Note 1)

CONSOLIDATED BALANCE SHEETS

	December 31, 1970	September 30, 1971 (Unaudited)
ASSETS		
Current assets:		
Cash	$ 24,878	$ 40,417
Certificates of deposit	100,000	353,200
Trade accounts receivable, less $2,700 and $7,000 allowance for doubtful accounts	94,621	115,216
Receivable from International Controls Corp.	51,200	351,910
Inventories (Note 2)	63,356	55,400
Prepaid expenses	12,775	32,440
Total current assets	346,830	948,583
Aircraft, leasehold improvements and equipment (Notes 3 and 4)	1,167,435	2,273,920
Less, accumulated depreciation and amortization	274,181	373,301
	893,254	1,900,619
	$1,240,084	$2,849,202
LIABILITIES		
Current liabilities:		
Accounts payable	$ 92,150	$ 317,889
Current portion of instalment notes (Note 4)	118,201	264,702
Accrued liabilities	11,593	23,003
Payable to International Controls Corp.	65,123	49,366
Total current liabilities	287,067	654,960
Instalment notes, less current portion (Note 4)	389,880	993,050
Notes payable to International Controls Corp. (Note 5)	320,000	200,000
Commitments and contingencies (Note 6)		
STOCKHOLDER'S EQUITY		
Serial preference stock, $.10 par value:		
Authorized 500,000 shares, none issued (Note 7)		
Common stock, no par, at stated value:		
Authorized, 10,000,000 shares; issued and outstanding 1,000 and 379,831 shares (Note 7)	92,141	92,141
Capital contributed in excess of stated value (Notes 3 and 5)	179,796	943,956
Retained earnings (deficit)	(28,800)	(34,905)
	243,137	1,001,192
	$1,240,084	$2,849,202

See accompanying notes to consolidated financial statements.

FAIRFIELD GENERAL CORPORATION AND SUBSIDIARIES (Note 1)

CONSOLIDATED STATEMENTS OF RETAINED EARNINGS (DEFICIT)

For the Year Ended October 31, 1966, Fourteen Months Ended December 31, 1967 and Three Years and Nine Months Ended September 30, 1971

(Data with respect to the Year Ended October 31, 1966 and the Nine Months Ended September 30, 1971 Is Unaudited.)

Balance, October 31, 1965	($ 2,771)
Net income for year ended October 31, 1966	67,467
Balance, October 31, 1966	64,696
Net loss for fourteen months ended December 31, 1967	(9,252)
Balance, December 31, 1967	55,444
Net loss for 1968	(39,917)
Balance, December 31, 1968	15,527
Net loss for 1969	(7,942)
Balance, December 31, 1969	7,585
Net loss for 1970	(36,385)
Balance, December 31, 1970	(28,800)
Net loss for nine months ended September 30, 1971	(6,105)
Balance, September 30, 1971	($34,905)

See accompanying notes to consolidated financial statements.

FAIRFIELD GENERAL CORPORATION AND SUBSIDIARIES (Note 1)

CONSOLIDATED STATEMENTS OF SOURCE AND APPLICATION OF FUNDS

	Year Ended December 31,			Nine Months Ended September 30,
	1968	1969	1970	1971 (Unaudited)
Source of funds:				
From operations:				
Income from sales and rentals	$ 972,338	$1,060,983	$910,906	$1,153,001
Costs other than depreciation and amortization	926,271	958,709	846,212	1,036,507
Income before depreciation and amortization	46,067	102,274	64,694	116,494
Additions to long-term debt	605,481	118,100	360,398	893,070
Disposals of aircraft, leasehold improvements and equipment	272,0[illegible]	765,945	60,202	319,530
Contribution of aircraft by International Controls Corp., net of debt assumed of $183,592 (Note 3)			[illegible],796	
Addition to capital contributed in excess of stated value (Note 5)				76[illegible]160
Additions to (deductions from) notes payable to International Controls Corp.	449,861	(246,[illegible]73)	116,365	(120,000)
Other, net	16,924	12,837		
	$1,391,027	$ 752,983	$781,455	$1,973,254
Application of funds:				
Additions to aircraft, leasehold improvements and equipment:				
By purchase	$1,243,149	$ 131,496	$214,184	$1,449,494
By contribution from ICC (Note 3)			363,388	
Reductions of long-term debt	134,836	540,703	14[illegible],382	289,900
Increase in working capital	13,042	80,784	56,501	233,860
	$1,391,027	$ 752,983	$781,455	$1,973,254
The increases (decreases) in working capital were as follows:				
Cash	($ 17,137)	$ 2,295	$ 16,488	$ 15,539
Certificates of deposit			100,000	253,200
Trade accounts receivable, net of allowances	72,079	(22,371)	17,402	20,595
Receivable from/payable to International Controls Corp., net	(2,550)	74,700	(89,973)	316,527
Inventories and prepaid expenses	13,917	(7,240)	41,958	11,709
Accounts payable, current portion of instalment notes and accrued liabilities	(53,267)	33,400	(29,374)	(383,710)
	$ 13,042	$ 80,784	$ 56,501	$ 233,860

See accompanying notes to consolidated financial statements.

FAIRFIELD GENERAL CORPORATION AND SUBSIDIARIES (Note 1)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(Data with respect to September 30, 1971 and subsequent is unaudited)

1. BASIS OF PREPARATION OF CONSOLIDATED FINANCIAL STATEMENTS:

Fairfield General Corporation was incorporated on November 19, 1971, and on December 9, 1971 International Controls Corp. ("ICC") transferred all of the issued and outstanding stock (379,831 common shares) of Fairfield Aviation Corporation ("Aviation") to Fairfield General Corporation in exchange for 379,831 shares of Fairfield General Corporation's common stock. Fairfield General Corporation has recorded its investment in Aviation at the amount of the consolidated net assets of Aviation, with a contra amount being credited to the capital accounts. At September 30, 1971 such consolidated net assets amounted to $1,001,192.

The consolidated financial statements included in this Prospectus give retroactive effect to the formation of Fairfield General Corporation and the issuance of its stock.

All operations of Fairfield General Corporation and its subsidiaries (the "Company") are conducted through Aviation and its wholly-owned subsidiary formed on December 23, 1970, Skyways Leasing Corporation ("Skyways").

Aviation was incorporated and began operations on October 27, 1965. Pursuant to an agreement, as of October 31, 1966 it became the survivor corporation after merging with Caldwell Flight Service, Inc. and Oakley's Aircraft Service, Inc. in a transaction accounted for as a pooling of interests. The operations of the pooled businesses are included in the statements of operations for the year ended October 31, 1966. As of July 31, 1967 the stockholders of Aviation transferred all of its outstanding stock to ICC in exchange for ICC common stock, and as a result, Aviation became a wholly-owned subsidiary of ICC.

2. INVENTORIES:

Inventories at December 31, 1970 at the lower of cost (principally first-in, first-out for aircraft parts, fuel and supplies and average for labor included in repair work in process) or market are summarized below. Inventories at September 30, 1971, were determined by use of the estimated gross profit method.

	December 31, 1970	September 30, 1971
Aircraft parts, fuel and supplies	$54,329	$51,000
Repair work in process	9,027	4,400
	$63,356	$55,400

Aggregate inventories used in the determination of cost of sales were as follows:

November 1, 1965	$ 5,340
October 31, 1966	7,839
December 31, 1967	12,862
December 31, 1968	34,4[illegible]
December 31, 1969	29,181
December 31, 1970	63,356
September 30, 1971	55,400

3. AIRCRAFT, LEASEHOLD IMPROVEMENTS AND EQUIPMENT:

Purchased aircraft, leasehold improvements and equipment are recorded at cost. Aircraft contributed by ICC during 1970 were recorded at $363,328 based on the then current value of such aircraft. In addition Skyways assumed debt in the amount of $153,592 on one of the contributed aircraft. Gross asset totals and estimated lives for depreciation and amortization purposes are as follows:

	December 31, 1970	September 30, 1971
Aircraft (8-12 years)	$ 780,868	$1,871,501
Leasehold improvements	330,959	341,000
Equipment (8 years)	55,608	60,320
	$1,167,435	$2,273,920

FAIRFIELD GENERAL CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Aviation and Skyways provide for depreciation by charging against income amounts sufficient to amortize the depreciable assets over their estimated useful lives on the straight line method except for aircraft purchased prior to January 1, 1968 which are depreciated on the double declining balance method. Leasehold improvements, net of estimated recoverable amounts, are amortized over the term of the lease, or the life of the improvement, whichever is shorter.

Generally, when properties are retired, sold or otherwise disposed of, the related cost and accumulated depreciation are removed from the accounts, and gains or losses resulting from such transactions are reflected in income.

The cost of ordinary repairs and maintenance is charged to income as incurred. Renewals and betterments are generally capitalized.

Aircraft and certain leasehold improvements and equipment with an unamortized cost of approximately $610,000 and $1,700,000 at December 31, 1970 and September 30, 1971, respectively, are pledged as collateral for the related instalment notes.

4. INSTALMENT NOTES:

The December 31, 1970 balance of instalment notes relates to certain of Aviation's aircraft and are payable to a bank in equal monthly amounts including interest at various rates and mature at various dates through March 1976.

At December 31, 1970 annual principal payments aggregate approximately $130,000, $123,000, $88,000 and $48,000 during the years ending December 31, 1972 to 1975, respectively.

A note payable with a December 31, 1970 balance of approximately $178,000 (less $31,000 current portion) included above has been subsequently paid as a result of the sale of an aircraft. Such payments include $34,000, $37,000, $40,000 and $36,000, respectively, due during the years ending December 31, 1972 to 1975.

At September 30, 1971 instalment notes include $990,880 (excluding interest charges) issued to Pan American World Airways, Inc. in connection with the purchase of a Boeing 707 by Skyways. The notes are payable in quarterly instalments of $66,152 (including interest at 10% per annum) commencing September 13, 1971 (see Note 5 with respect to contributed amount by ICC for the purchase of the Boeing 707 and "Business" located elsewhere in this Prospectus).

5. NOTES PAYABLE TO AND CAPITAL CONTRIBUTION BY INTERNATIONAL CONTROLS CORP.:

In 1971 the $320,000 7¾% notes which were outstanding at December 31, 1970, an advance of $343,750 in connection with the purchase of a Boeing 707 and $100,410 representing current amounts due to ICC were contributed to the Company's capital by ICC. In addition, Skyways issued to ICC a $200,000 7% unsecured note due September 15, 1976.

6. COMMITMENTS AND CONTINGENCIES:

Minimum annual rentals in connection with the lease under which Aviation operates airport property aggregate approximately $86,800 and $91,800 for the lease years ending April 30, 1972 and 1973 (expiration).

The lease provides, among other things, that the lessor may terminate the lease upon one year's prior written notice.

In November, 1971 the Company entered into an agreement providing for the refurbishing of the Boeing 707 interior for an amount up to $350,000 payable upon completion of the work (approximately January, 1972).

FAIRFIELD GENERAL CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Concluded)

7. CAPITAL STOCK:

On December 3, 1970 Aviation's Certificate of Incorporation was amended to authorize 500,000 shares of Serial Preference Stock, $.10 par value. Dividend, redemption, voting, liquidation or other preferences of the Serial Preference Stock may be fixed by resolution of the Board of Directors.

In November 1970, ICC declared a dividend of all of the outstanding common stock of Aviation. Accordingly, on May 26, 1971 Aviation's Certificate of Incorporation was amended to increase the authorized common stock from 1,000 shares to 10,000,000 shares, and to split and change the outstanding 1,000 shares into 379,831 shares. As a result of the transfer by ICC of its shares of Aviation in exchange for shares of Fairfield General Corporation described in Note 1, such shares will be distributed by ICC as a dividend. In addition the Company has authorized (none outstanding) 500,000 shares of Serial Preference Stock, $.10 par value. Dividend, redemption, voting or liquidation or other preferences of the Serial Preference Stock may be fixed by resolution of the Board of Directors (see "Dividend of the Company's Common Stock" elsewhere in this Prospectus).

8. SUPPLEMENTARY PROFIT AND LOSS INFORMATION:

The following items were charged directly to operations:

	Cost of sales and expenses	Selling, general and administrative expenses	Total
Maintenance and repairs:			
Year ended December 31:			
1968	$ 7,155		$ 7,155
1969	9,848		9,848
1970	7,720		7,720
Nine months ended September 30, 1971	5,737		5,737
Depreciation and amortization:			
Year ended December 31:			
1968	80,477	$5,507	85,984
1969	103,797	6,419	110,216
1970	95,926	5,153	101,079
Nine months ended September 30, 1971	118,315	4,284	122,599
Taxes, other than Federal income taxes:			
Payroll taxes:			
Year ended December 31:			
1968	12,348		12,348
1969	17,884		17,884
1970	18,202		18,202
Nine months ended September 30, 1971	11,381		11,381
Other:			
Year ended December 31:			
1968		1,329	1,329
1969		833	833
1970		876	876
Nine months ended September 30, 1971 (principally jet fuel tax)	13,007	2,057	15,064
Rents:			
Year ended December 31:			
1968	107,350		107,350
1969	106,935	506	107,441
1970	108,027	1,644	109,671
Nine months ended September 30, 1971	72,000	539	72,539

Exhibit B

Affidavit 168a

THIS AGREEMENT entered into this first day of October, 1971 by and between SKYWAYS LEASING CORPORATION, a New Jersey corporation, hereinafter called "Skyways", and International Controls Corp., a Florida corporation, hereinafter called Lessee.

W I T N E S S E T H :

WHEREAS, Lessee desires to lease one Boeing Model 707/321 aircraft from Skyways and Skyways is willing to lease said aircraft to Lessee;

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and the rentals and other considerations herein reserved, the parties hereby agree as follows:

ARTICLE I -- Aircraft Leased to Lessee

(a) Skyways hereby leases to Lessee the Boeing Model 707/321 type aircraft (Manufacturer's Serial No. 17606), Federal Aviation Administration Registry No. N11RV (hereinafter sometimes referred to as the "Aircraft"). The term "Aircraft" as used in this Agreement shall include the airplane, the engines and all parts, equipment, instruments, accessories and other property listed in Exhibit A attached hereto, and such replacement items as Lessee may install during the period the Aircraft is in its possession.

(b) The Aircraft shall be delivered to Lessee by Skyways at Newark Airport, Newark, New Jersey, United States.

(c) Lessee shall not mortgage, pledge, assign, transfer or sublet nor voluntarily part with

the Aircraft in any manner whatsoever, either directly or indirectly without the written consent of Skyways; nor shall Lessee willfully do or suffer anything whereby the Aircraft shall, or may be seized, taken in execution, impounded, attached, damaged, or destroyed.

(d) There shall be no obligation on the part of Skyways for any reason whatsoever to replace the Aircraft.

(e) Skyways makes no representations nor warranties, express or implied, of any kind or nature whatsoever regarding the Aircraft or its equipment or the condition or serviceability thereof.

ARTICLE II -- Use of Aircraft

As an inducement to Skyways to enter into this Agreement, Lessee represents and warrants that the Aircraft will be used by Lessee only for transporting certain of the officers, directors, employees and guests of it or any of its affiliated corporations and their baggage. Subject to Lessee's right to assign or sublet its rights under this Agreement, Lessee agrees that it will not operate the Aircraft for hire or reward (including reimbursement of expenses) or allow the Aircraft to be used for instructional purposes.

ARTICLE III -- Duration of Lease

The lease of the Aircraft shall be for a term of five (5) years commencing on October 1, 1971 and ending September 30, 1976.

ARTICLE IV -- Deposit and Rental

(a) Lessee will deposit with Skyways on or before December 15, 1971 the sum of $100,000 as security for the

performance by Lessee of the terms of this Agreement. Such sum shall bear interest at the rate of 6% per annum and such interest shall be credited to the benefit of Lessee and become part of the security deposited hereunder. Skyways may use or apply the whole or any part of the security deposited hereunder for any rent or other sum as to which Lessee is in default or for any sum which Skyways may expend or may be required to expend by reason of Lessee's default in respect of any of the terms of this Agreement. In the event that Lessee shall comply with all of the terms of this Agreement, the security, together with any interest earned thereon, shall be returned to Lessee after the termination of this Agreement and after delivery of possession of the Aircraft to Skyways. Lessee shall not assign or encumber the security, and neither Skyways nor its successors or assigns shall be bound by any such assignment or encumbrance.

(b) Lessee shall pay Skyways, as rent for the Aircraft, the sum of $100,000 per month for each of the months of October, November and December 1971 payable on or before December 15, 1971; thereafter, payable in advance on or before the first day of each month, $83,000 per month for each of the months January through December 1972; and $47,000 per month for each of the months January 1973 through September 1976, inclusive whether or not the Aircraft is operating or is in operating condition, is grounded by reason of weather, mechanical difficulties, repair or for

any other reason whether similar or not. The foregoing rent, includes the cost of insurance coverage specified in Article XII hereof (currently $125,000 per annum), and shall be subject to increase during the term of this Agreement in an amount equal to the increase of the cost to Skyways of maintaining such insurance coverage. Skyways shall give Lessee written notice of any such increase together with documentation evidencing the same. In the event Lessee defaults on any of the terms, provisions, and conditions of this Agreement, including but not limited to, the payment of rent, Skyways may use, apply or retain the whole or any part of the rent so paid to the extent required, for any other sum as to which Lessee is in default, or for any sum which Skyways may expend or may be required to expend by reason of the default of Lessee on any of the terms, covenants, and conditions of this Agreement.

(c) All rental payments hereunder shall be made at the office of Skyways at 171 Passaic Avenue, Fairfield, New Jersey, or at such other place as Skyways may from time to time designate in writing.

ARTICLE V -- Termination

(a) This Agreement may be terminated at the option of Skyways in the event of sale or transfer of ownership of the Aircraft on five (5) days' prior written notice. Such termination shall take effect upon return of the Aircraft to Skyways pursuant to the provisions of this Agreement following the giving of such notice.

agents at Newark Airport, New Jersey, or at such other point as Skyways may designate, and upon such return:

(i) The Aircraft shall have an appropriate current Federal Aviation Administration Certificate of Airworthiness.

(ii) The Aircraft shall be in the same condition as when delivered and equipped with the same or better equipment, except for reasonable wear and tear for ordinary use subject to the provisions of Article VI hereof.

(iii) Lessee shall cause the balance, if any, of the escrow account established pursuant to Article VI (b) hereof to be paid over to Skyways.

(iv) Lessee shall pay to Skyways a sum equal to the number of hours logged on each aircraft engine during the final month of the term of this Agreement or portion thereof multiplied by $7.50 per engine and a sum equal to the number of flight hours logged by the Aircraft during the final month of the term of this Agreement or portion thereof mulitplied by $170.00.

Provided further, that Lessee agrees that it will make the Aircraft available to Skyways for at least three (3) days and not more than ten (10) days immediately prior to the termination of this Agreement at an airport designated by Skyways for the purpose of permitting Skyways to inspect the condition of the Aircraft. In connection with such inspection, Skyways shall be entitled to an acceptance flight check of not more than one hour's duration, at the expense of Lessee, and Lessee will at its own expense and at Skyways' request correct any condition of the Aircraft discovered on such acceptance check, which condition upon the Air

In the event rehabilitation and repairs are necessary to return the Aircraft in the prescribed condition, the term of this Agreement shall be deemed extended for the period required to enable Lessee to make such rehabilitation, repairs, and correction and all of the terms and conditions of this Agreement shall apply to such extended period. In the event Lessee fails or is unable for any reason to return the Aircraft to Skyways on the specified date of termination of this Agreement, then, except as herein expressly otherwise provided, the term of this Agreement shall be extended until such time as Lessee returns the Aircraft to Skyways and all of the terms and conditions of this Agreement shall apply to such extended period. Rent shall be paid by Lessee to Skyways at a rate equal to the pro rata monthly rent then in effect, until the termination of any such extended term of this Agreement.

Skyways agrees that in the event of the total loss (or constructive total loss) of the Aircraft, it will accept the insurance value of the Aircraft as provided in Article XII hereof, in discharge of the obligation of Lessee to redeliver the Aircraft and Lessee agrees to pay such amount irrespective of the cause of loss and whether or not insured against. In the event the Aircraft shall during the term of this Agreement be lost or totally destroyed and Skyways shall have received payment in full of all loss and damage sustained by Skyways by reason of said total destruction of the Aircraft, then this Agreement shall be automatically

cancelled and terminated as of the date of such payment, and Lessee shall be obligated to pay only the rental due to the date of such payment. In the event of a partial loss, the rental shall be unabated, and if the time necessary to repair the Aircraft goes beyond the termination date of this Agreement, this Agreement shall be extended to provide sufficient time to repair the Aircraft completely and full rental shall be paid during this extended period.

ARTICLE VI -- Maintenance, Care and Overhaul of the Aircraft

(a) Lessee shall, at its own expense during the term of this Agreement, maintain and keep the Aircraft in good order and repair subject to the requirements of Part 121 of the Regulations of the Federal Aviation Administration of the United States ("FAA") and the equivalent rules and regulations of any other governmental regulatory authorities which may, from time to time, have jurisdiction over the Aircraft. Lessee shall, within a reasonable time at its own cost and expense, replace in or on the Aircraft all parts, equipment, appliances, instruments or accessories in accordance with manufacturers specification which may be timelife retired, lost, destroyed, confiscated or rendered unfit for use, with other property which shall:

(i) Be in good operating condition and shall have a value and utility at least equal to that of the property replaced if the same were in usable condition and good repair, and

(ii) be owned by Lessee free and clear of all liens and encumbrances;

Provided further, that Lessee shall, at its own expense, cause all engine overhaul and all inspection and maintenance service to be performed on the Aircraft, and Lessee shall be responsible for all other repairs required on the Aircraft, including replacement of parts when necessary, and Lessee shall accomplish FAA Airworthiness Directives applicable to the Aircraft and shall accomplish the licensing and relicensing of the Aircraft as applicable if required by the FAA or other appropriate governmental authorities at any time during the term of this Agreement; provided, however, that if Lessee shall default in any of the provisions hereof, Skyways shall have the right to correct said default and the cost thereof shall become due and payable on demand of Skyways. Failure to make such payment when demanded shall be cause for termination of this Agreement. Any such termination shall not excuse Lessee from its obligations to make rental payments for the balance of the term hereof.

(b) Lessee shall be responsible for all costs of airframe and engine overhauls, during the term hereof. It is agreed that in the event Lessee wishes to accomplish a major overhaul on the airframe or engines during the term of this Agreement the specifications of any such overhaul and the shop accomplishing such work are to be approved by Skyways in writing in current status. On or before the fifteenth

day of each month during the term of this Agreement, commencing on the third month of this Agreement, Lessee will deposit into an escrow account, to be maintained by a banking institution mutually acceptable to the parties hereto:

(i) A sum equal to the number of hours logged on each aircraft engine during the preceding calendar month multiplied by $7.50 per engine (except the initial payment shall relate to the hours logged on each Aircraft engine during the two preceding calendar months); and

(ii) A sum equal to the number of flight hours logged during the preceding calendar month multiplied by $170.00(except the initial payment shall relate to the flight hours logged during the two preceding calendar months).

The terms of the escrow pursuant to which such sums shall be held shall provide that the sums deposited therein shall be used to pay for the cost of any overhauls of the Aircraft's airframe, wings or engines performed during the term of this Agreement, and further that the balance of the escrow, if any, shall be paid over to Skyways upon the termination of this Agreement. In addition, the terms of the escrow shall provide that Skyways shall be notified of all deposits made therein and consent in writing to all withdrawals made therefrom.

prior written consent of Skyways and provided that such alterations, modifications, additions, or improvements do not reduce the value of the Aircraft and provided further that all such alterations, modifications, additions, or improvements shall be in accord with standards set by the FAA and any other appropriate regulatory agency having jurisdiction over the Aircraft. Any such alteration, modification, addition or improvement to the Aircraft shall become the property of Skyways and shall be subject to all the terms of this Agreement.

ARTICLE IX -- Use of the Aircraft

Lessee may operate the Aircraft subject to the exceptions stated in this Agreement provided however, that it shall not use the Aircraft in violation of any foreign, federal, state, territorial, or municipal law or regulation or any rules and regulations of any public authorities having jurisdiction over the Aircraft and shall be solely responsible for any fines, penalties or forfeitures and taxes occasioned by any violation thereof, and if such fines or penalties are imposed upon Skyways and paid by it, Lessee shall reimburse it therefor on demand of Skyways.

Lessee may not permit the Aircraft to be taken into any area of the world which is not included in the insurance coverage maintained pursuant to Article XII (c) hereof, provided, however, Skyways will, at the written request of Lessee, use its best efforts to expand such insurance coverage on either a temporary or permanent basis.

ARTICLE X -- Exterior of Aircraft

Lessee shall maintain the exterior of the Aircraft in good condition and shall not print or paint its name or any other registration number or other symbols upon the exterior of the Aircraft. However, Lessee shall affix a permanent plaque in a conspicuous place on the Aircraft stating:

> "This Aircraft is owned by Skyways Leasing Corporation and is subject to the terms and conditions of an Agreement dated October 1, 1971, by and between Skyways Leasing Corporation and International Controls Corp."

and any and all documents which may be required by the FAA or any other regulatory agency having jurisdiction over the Aircraft for this purpose.

ARTICLE XI -- Taxes and Operating Expenses

Lessee shall have absolute control, direction, and responsibility for, and shall bear and pay all costs of operating and maintaining the Aircraft, including all taxes, assessments, custom duties, tariffs, import charges or governmental charges levied upon the Aircraft and all excise taxes, gasoline taxes, licensing fees, landing fees, or any other airport fees, or any other operating expenses of whatever nature and kind, and Lessee shall have responsibility for and shall promptly pay and discharge all sales and use taxes incurred by reason of this Agreement, provided however, that upon Lessee's default to so discharge any such tariffs, custom or other import duties taxes, assess-

ments or costs of operation, Skyways may do so at the expense of Lessee and charge the same to Lessee and such cost and expense thereof shall become due and payable on demand of Skyways.

ARTICLE XII -- Risk of Loss or Damage and Liability

(a) Lessee agrees and covenants to indemnify, save, and hold Skyways harmless against any and all expenses, losses, damages, including reasonable attorneys' fees caused by or arising out of in whole or in part, the possession, management or operation of the Aircraft by Lessee and/or its bailees, agents, employees or representatives.

(b) Lessee, at all times during and throughout the term of this Agreement, shall be solely liable for damages to property of Lessee or property of others, or for personal injuries or death to Lessee's officers, agents, servants, or employees, or to any other persons, including without limitation, those third parties who may become passengers on the Aircraft or suffer ground damage, arising from or incident to the possession and use of the Aircraft from any cause whatsoever and Lessee shall save Skyways harmless from any and all such claims.

(c) The rent specified in Article IV hereof includes the cost and expense incurred by Skyways in connection with insurance insuring Fairfield Aviation Corporation, Skyways (including Pan American World Airways, Inc. pursuant to the terms of the Chattel Mortgage referred to in Article XXI hereof) and Lessee, as

their respective interests may appear, against liability for loss, injury, damage, claims or expenses arising out of injuries to or deaths of passengers and third parties, and damage to property (including baggage and cargo) caused by Lessee's operation or possession of the Aircraft and against loss, destruction or damage to the Aircraft, such insurance shall include the following coverage:

(i) All risk hull insurance for the full value of the Aircraft (with the following deductible provisions: flight, taxiing and ingestion - $60,000 each claim; ground - $2,500 each claim) with Skyways, Fairfield Aviation Corporation, Lessee and Pan American World Airways, Inc., named as co-insured. In addition, such insurance includes a "Breach of Warranty" clause whereby the insurer agrees that a breach of the insuring conditions will not invalidate the insurance as to Pan American World Airways, Inc., Fairfield Aviation Corporation, and Skyways, as their respective interests may appear, and a waiver of all rights of subrogation by the insurer against Pan American World Airways, Inc., Fairfield Aviation Corporation and Skyways.

(ii) Insurance coverage for the full value of the Aircraft against risks of war, strikes, riots, civil commotions, vandalism, malicious damage, confiscation and hi-jacking with Skyways, Fairfield Aviation Corporation, Lessee and Pan American World Airways, Inc., named as co-insured, such insurance includes a "Breach of Warranty" clause whereby the

Affidavit

insurer agrees that a breach of the insuring conditions will not invalidate the insurance as to Pan American World Airways, Inc., Fairfield Aviation Corporation, and Skyways, as their respective interests may appear, and a waiver of all rights of subrogation by the insurer against Pan American World Airways, Inc., Fairfield Aviation Corporation and Skyways.

(iii) Single limit bodily injury or death insurance, including passenger and property damage, in the amount of $20,000,000 with Skyways, Fairfield Aviation Corporation, Lessee and Pan American World Airways, Inc. named as co-insured, such insurance includes a "Breach of Warranty" clause where the insurer agrees that a breach of the insuring conditions will not invalidate the insurance as to Pan American World Airways, Inc., Fairfield Aviation Corporation, and Skyways, as their respective interests may appear, and a waiver of all rights of subrogation by the insurer against Pan American World Airways, Inc., Fairfield Aviation Corporation and Skyways.

(d) Each policy of insurance relating to the insurance obtained pursuant to sub-paragraph (c) above of this Article XII shall provide that the proceeds of such insurance shall be payable to Skyways and Pan American World Airways, Inc., as their interests in the Aircraft may from time to time appear. All insurance proceeds received by Skyways with respect to the Aircraft shall:

(i) be paid over the Lessee, in the case of repairable damage to the Aircraft, upon receipt by Skyways of proof satisfactory to Skyways of the proper repair of such damage; or

Affidavit

(ii) be applied by Skyways, in the case of the loss, destruction or damage beyond repair of the Aircraft, to satisfy Lessee's obligation to make the payment required by Article V (b) of this Agreement.

(e) Skyways covenants and agrees to use its best efforts to obtain such additional insurance coverage as Lessee may reasonably request in writing to Skyways.

(f) For the purpose of this Article XII the full value of the Aircraft is fixed at $1,775,000.

ARTICLE XIII -- Inspection

Lessee agrees to permit Skyways or its duly authorized agent to inspect the Aircraft, and its airframe and engine logs at any reasonable time, and to furnish to Skyways or its duly authorized agent any information in respect to the Aircraft and its use that Skyways may reasonably request.

ARTICLE XIV -- Assignments

In the event of sale or transfer of ownership of the Aircraft, Skyways shall have the unlimited right to assign its rights under this Agreement. Lessee shall not assign its rights under this Agreement, or delegate its duties under this Agreement or enter into any sublease of the Aircraft without the prior written consent of Skyways. In any event, any such assignment or sublease will be subject to all of the terms hereof and Lessee will remain liable for the performance of all of the terms and conditions of this Agreement, including but not limited to the payment of rent and deposits into escrow pursuant to Article VI (b) hereof.

ARTICLE XV -- Substitution of Aircraft

In the event Skyways acquires an aircraft with comparable range and utility to the Aircraft on or before October 1, 1972, Lessee agrees to lease such aircraft from Skyways for a period of at least

four years substitution for the Aircraft on terms substantially equivalent to the terms of this Agreement provided, however, the rental payment and escrow deposits relating to such aircraft will bear the same relationship to Skyways' costs relating to such aircraft as the payments provided for herein bear to Skyways' costs relating to the Aircraft.

ARTICLE XVI -- Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

ARTICLE XVII -- Notices

Service of all notices under this Agreement shall be sufficient if given in writing and delivered personally to the parties subscribing here below, or sent by certified mail to the parties at their addresses herein set forth, or at such addresses as the parties may provide for in writing from time to time.

To Skyways: Skyways Leasing Corporation
171 Passaic Avenue
Fairfield, New Jersey 07006
Attention: Mr. Ralph P. Dodd

To Lessee: International Controls Corp.
200 Fairfield Road
Fairfield, New Jersey 07006
Attention: Mr. Frank G. Beatty

ARTICLE XVIII -- No Waiver

The failure of Skyways in any one or more instances to insist upon strict performance or observance of one or more of the covenants or conditions hereof, or to exercise

any remedy, privilege or option herein conferred upon or reserved to Skyways, shall not be construed as a waiver of any future breach of any covenants or conditions or of the right to enforce the same or to exercise such privilege, option, or remedy, but the same shall continue in full force and effect.

ARTICLE XIX -- Construction

Time is of the essence of this Agreement and each of its provisions herein. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

ARTICLE XX -- Governing Law

This Agreement, regardless of where executed, shall be construed and performance shall be determined in accordance with the laws of the State of New Jersey.

ARTICLE XXI -- Default

If Lessee defaults in any terms, covenants and conditions of this Agreement, Skyways at its option, upon ten (10) days prior written notice to Lessee may elect to terminate this Agreement, and this Agreement shall be terminated at the end of said ten (10) day period unless Lessee shall correct the default within said period. Notwithstanding the foregoing, Lessee shall be entitled to no more than five (5) days notice with respect to default in payments of rent or deposits into escrow hereunder. In the event of such termination, Lessee shall, at its own cost and expense, return the Aircraft to Skyways at the place designated by Skyways in such notice and Skyways shall further have the right:

(a) To declare the entire amount of rent hereunder immediately due and payable without further notice or demand to Lessee and Lessee waives such notice.

(b) To sue for and recover all rents and other payments it has accrued or thereafter accruing with respect to the Aircraft.

(c) To take possession of the Aircraft without further demand or notice wherever the same may be located, without any court order or other process of law and Lessee hereby waives any and all damages occasioned by said repossession.

(d) To pursue any other remedy either in law or equity available to Skyways.

In the event Skyways should recover possession of the Aircraft and should re-lease the Aircraft to a third party, Lessee shall thereafter be obligated to Skyways for any deficiency between the rental received by Skyways from such third party, and the rental specified hereunder.

ARTICLE XIII--Insolvency

In the event of any act of insolvency by Lessee, which shall include but not be limited to its application for or consent to the appointment of a receiver, trustee or liquidator of all or of a substantial portion of its assets; it being unable to or making an admission in writing of its inability to pay its debts as they mature; making a general assignment for the benefit of creditors;

being adjudicated a bankrupt or insolvent; filing a voluntary petition in bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law; filing an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against it in any bankruptcy reorganization or insolvency proceeding, or take any action under the laws of any applicable jurisdiction analogous to any of the foregoing, or if corporate action shall be taken by it for the purpose of effecting any of the foregoing, then and in that event Skyways shall have and may exercise any one or more of the remedies set forth in Article XXI hereof, and this Agreement will be deemed to have terminated concurrently with the act of insolvency and shall not be treated as an asset of Lessee.

ARTICLE XXIII- Subordination

This Agreement hereby made is specifically subject and subordinate to Chattel Mortgage dated as of June 14, 1971 between Skyways Leasing Corporation and Pan American World Airways, Inc., as Mortgagee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SKYWAYS LEASING CORPORATION

By _____

ATTEST:

_____
Asst. Secretary

INTERNATIONAL CONTROLS CORP.

By _____

ATTEST:

EXHIBIT A
187a

Affidavit

Avionics and Instrument Equipment Lists and Landing Gear and Airframe Status

I Avionics Equipment List

Radio Installation

A. High Frequency Communications - Dual

2 ea. Aerocom "Atom" High Frequency Transmitters
2 ea. Aerocom "Star" High Frequency Receivers
2 ea. Aerocom "Pack" Power Supply
2 ea. Unival 116769 Control Amplifier
2 ea. Unival 116694 Antenna Coupler
2 ea. Gables Engrg. Control Panel
1 ea. Baco Probe Antenna

B. VHF Communications - Dual

2 ea. Collins 17L6/17L7 Transmitter
2 ea. Bendix RA18/RA21 VHF Receiver
2 ea. Gables Control Unit
2 ea. Baco 65-1791 Antenna

C. Navigation Equipment

(1) Automatic Direction Finders - Dual

2 ea. Collins 51Y (3) ADF Receivers
2 ea. Collins ADF1, ADF2 Control Panel
2 ea. Collins 137A-2 Loop Antenna
2 ea. Baco Sense Antenna

(2) Bendix Doppler - Dual

2 ea. Bendix ENA2433 Controller Computer
2 ea. Bendix CNA12A Control
2 ea. Bendix Doppler Indicator
2 ea. Bendix Doppler Transceiver

D. EDO Loran

1 ea. Edo 345 Loran Receiver
1 ea. Edo Receiver/Timer
1 ea. Edo Control Unit

E. Marker Beacon

1 ea. Bendix Radio 75 meg. Marker Receiver
1 ea. Gables Control Panel
1 ea. Collins Antenna
2 ea. Baco Indicator (Capt/F.O.)

F. Distance Measuring Equipment (DME)

1 *Collins 680 E Interrogator
1 ea. Gables Control Panel
1 ea. Sensors Antenna
2 ea. Collins Indicator (Capt/F.O.)

G. VOR/ILS - Dual

2 ea. Collins 51R3 Receivers - VOR
2 ea. Collins 51V3 Receiver - Glide Slope
1 ea. Collins 351A-1C VOR Accessory Unit
1 ea. Collins Glide Slope Antenna
1 ea. Baco VOR/LOC Antenna
2 ea. Gables Control Panels
2 ea. Sperry Indicator RMI
2 ea. Sperry Indicator PDI

H. Radio Altimeters

Low Range Radio Altimeter (Range 0-2500 Ft.)
1 ea. Litton Transmitter-Receiver
2 ea. Gables Control Panel
2 ea. Litton Indicator (Capt/F.O.)
4 ea. Spec 530 Antenna

High Range Radio Altimeter (Range 0-50000 Ft.)
1 ea. MIL Transmitter-Receiver
1 ea. MIL Indicator
1 ea. MIL Antenna

I. Weather Radar - RCA AVQ10

1 ea. RCA M 137517 Transmitter/Receiver
1 ea. RCA M 137521 Accessory Unit
1 ea. RCA M 137586 Antenna Unit
1 ea. RCA M 137524 Indicator
1 ea. RCA G585A Control Panel

* Alternate - ITT Federal

J. ATC Transponder

1 ea. Collins Transponder
1 ea. Cables Control Panel
1 ea. Sensors Antenna

K. Interphone System - Cables Amplifier

An Interphone System is installed which provides internal and external communication for flight and service operations, as well as between the flight deck, galleys and cabin attendant positions.

L. Passenger Address System - Cables Amplifier

Flight crew announcements or recorded music are directed to the passengers through the passenger address system.

Announcements can be made from the flight deck or cabin attendants' panels. Speakers are located throughout the lounge, cabin and lavatories.

II Flight Instruments
Indicator Index-Major Instruments

A. Captain's Panel

Nomenclature	Manufacturer	Vendor P/N
Indicated Airspeed	Kollsman	A41067-10-011
Horizon Flight Director	Sperry	2587909-904
Low Range Radio Altimeter	Litton	44456 Mod 2
Kifis Barometric Altimeter	Kollsman	B41597-10-001
Gyrosyn Compass	Sperry	1777213-653
Pictorial Deviation	Sperry	1777211-756
Rate of Climb	Bendix	1659-6A1F6-1
Integrally Lighted Clock	Aerosonic	88000-4111
Machmeter	Kollsman	A31807-10-126
Doppler	Bendix	37900-1A1A2
Distance Measuring Equipment	IT&T	AIN102A1

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Nomenclature	Manufacturer	Vendor P/N
Three Axis Trim	Weston	1889-3211
True Airspeed	Kollsman	B337277-10-002
Ram Air Temp.	Lewis Engrg.	162BCLyW
Engine Power Instru.	Standard Grouping	705-7-V81
Stand by Horizon	Sfena	

C. First Officer's Panel

Nomenclature	Manufacturer	Vendor P/N
Indicated Airspeed	Kollsman	A41067-10-311
Horizon Flight Dir.	Sperry	2587909-964
Low Range Radio Altimeter	Litton	44456 Mod 2
Kifis Barometric Altimeter	Kollsman	B41597-10-391
Gyrosyn Compass	Sperry	1777213-653
Pictorial Deviation	Sperry	1777211-756
Rate of Climb	Bendix	1659-6ABF6-1
Integrally Lighted Clock	Acrosonic	88000-4111
Machmeter	Kollsman	A31807-10-12
Doppler	Bendix	37900-1A1A2
Distance Measuring Equipment	IT&T	AJN102A1
Static Air Temp.	IDC	13966
Flap Position	United Cont.	F381-1A
System Hydraulic Pressure	Ametek	SRL07CE
Brake Hydraulic Pressure	Ametek	SRL07CK
Rudder Hydraulic Pressure	Ametek	SRL07CH

III Landing Gear Status *

Main Landing Gear - 11,510 hrs. to overhaul
Nose Landing Gear - 11,110 hrs. to overhaul

* Status as of April 26, 1971

IV Airframe Status*

Total Airframe time-	39,591 hrs.
Heavy Package Service-	42,601 hrs.
Time Since Heavy Package-	40,214 hrs.

* Status as of April 26, 1971

Affidavit

Exhibit C

EXHIBIT C

Affidavit **193a**

1972 B-707 MOVEMENT

DATE	FROM-TO	NO. PAX
1-4	NBO-BEY BEIRUT	10
1-6	BEY-LHR LONDON	13
1-8	LHR-EWR NEWARK	12
1-10	EWR-SAN SAN DIEGO	4
1-11	SAN-BUR BURBANK	3
1-11	BUR-RNO RENO	2
1-12	RNO-JAX JACKSONVILLE	2
1-12	JAX-NAS NASSAU	1
1-14	NAS-EWR	10
1-15	EWR-GSW FT. WORTH TEX.	(mod.)
1-30	GSW-EWR	0
1-30	EWR-JFK NEW YORK	0
1-30	JFK-LUX LUXEMBOURG	8
2-1	LUX-STR	2
2-1	STR-AMS AMSTERDAM	3
2-2	AMS-LHR	6
2-3	LHR-FCO	5
2-4	FCO-BEY	4
2-7	BEY-DAM	8
2-7	DAM-KWI	8
2-8	KWI-DAM	9
2-8	DAM-BEY	9
2-8	BEY-MGA	6
2-9	MGA-EWR	2
2-11	EWR-NAS	8
2-13	NAS-EWR	6
2-16	EWR-IAD	5

2-16	IAD-NAS	6
2-17	NAS-EWR	7
2-18	EWR-NAS	7
2-22	NAS-EWR	10
2-28	EWR-PBI W.P.Beach	4
3-2	PBI-EWR	6
3-8	EWR-YZ Canada	2
3-8	YZ-IAD	1
3-8	IAD-EWR	2
3-12	EWR-LHR	6
3-13	LHR-BEY	4
3-16	BEY-MUC	8
3-18	MUC-EWR	8
3-21	EWR-IAD	4
3-21	IAD-DTW Detroit	2
3-22	DTW-EWR	2
3-30	EWR-NAS	24
3-30	NAS-MIA	0
4-4	MIA-NAS	0
4-6	NAS-EWR	22
4-8	EWR-AMS	10
4-11	AMS-LHR	3
4-14	LHR-EWR	5
4-15	EWR-GSW	4
4-15	GSW-BUR	9 (mod,)

5-4	BUR	BUR	12 (test)
5-6	BUR	GSW	3
5-6	GSW	EWR	0
5-12	EWR	NAS	12
5-13	NAS	EWR	12
5-16	EWR	JFK	1
5-16	JFK	NCE (Nice)	4
5-16	NCE	BEY	3
5-18	BEY	LHR	3
5-21	LHR	EWR	2
5-31	EWR	IAD	2
5-31	IAD	EWR	3
6-2	EWR	NAS	6
6-3	NAS	EWR	6
6-3	EWR	LHR	14
6-10	LHR	LIS	10
6-10	LIS	SMA	12
6-11	SMA	EWR	11
6-17	EWR	LAS (Las Vegas)	23
6-18	LAS	NAS	15
6-21	NAS	PAP	13
6-22	PAP	SDQ	12
6-22	SDQ	EWR	12
6-23	EWR	LHR	2
6-24	LHR	EWR	2
6-26	EWR	BGR (Bangor)	1
6-26	BGR	ZUR (Zurich)	1

6-27	BUR SMA	1
6-27	SMA NAS	1
6-29	NAS SJO Costa Rica	4
7-1	SJO SDQ	3
7-1	SDQ EWR	5
7-6	EWR SJO	10
7-8	SJO FLL Ft Lauderdale	11
7-8	FLL EWR	11
7-9	EWR AMS	9
7-11	AMS FCO	9*
7-11	FCO RAB Morocco (RABAT)	9
7-12	RAB EWR	5
7-17	EWR GSW	12 (mod.)
7-17	GSW BUR	13
8-4	BUR BUR	14 (test)
8-6	BUR SAN	10
8-6	SAN EWR	9
8-6	EWR LAS	2
8-8	LAS SJO	7
8-11	SJO ACA Acapulco	3
8-13	ACA DAL Dallas	5
8-13	DAL EWR	3
8-14	EWR NAS	9
8-16	NAS SDQ	4
8-17	SDQ NAS	8
8-17	NAS EWR	11
8-18	EWR DTW Detroit	2
8-18	DTW EWR	2
8-20	EWR NAS	7

8-20	NAS FLL	0
8-25	FLL NAS	0
8-25	NAS SJO	7
8-27	SJO NAS	7
8-30	NAS SJO	8
9-3	SJO JAX	7
9-3	JAX EWR	7
9-7	EWR NAS	10
9-8	NAS EWR	8
9-10	EWR LHR	10
9-10	LHR SND	2
9-13	SND LHR	2
9-13	LHR NAS	8
9-14	NAS SJO	5
9-15	SJO MSY New Orleans	2
9-15	MSY EWR	3
9-17	EWR GSW	(mod.)
10-3	GSW HOU Houston	0
10-4	HOU EWR	0
10-5	EWR SJO	0
10-6	SJO NAS	11
10-7	NAS EWR	8
10-9	EWR LHR	3
10-11	LHR MAD Madrid	6
10-12	MAD NAS	4
10-13	NAS EWR	2
10-16	EWR NAS	2

10-17	NAS EWR	2
10-22	EWR MAD	7
10-25	MAD MGA	4
10-25	MGA MAD	7
10-26	MAD NAS	22
10-28	NAS JFK	9
10-28	JFK NAS	0
10-30	NAS EWR	13
11-5	EWR SJO	6
11-6	SJO NAS	5
11-6	NAS EWR	7
11-12	EWR MAD	3
11-14	MAD NAS	7
11-14	NAS SJO	7
11-15	SJO NAS	5
11-16	NAS EWR	3
11-18	EWR DTW	3
11-18	DTW EWR	2
11-19	EWR SJO	5
11-21	SJO FLL	1
11-21	FLL EWR	1
11-22	EWR SJO	8
11-25	SJO NAS	22
11-26	NAS EWR	11
11-27	EWR NAS	2
11-27	NAS SJO	7
11-28	SJO NAS	6
11-29	NAS MAD	12

Exhibit D

GULFSTREAM AERO A Tenneco Company

SKYWAY LEASING CO.
1711 Passaic Avenue
Fairfield, New Jersey

Reg. No. N11RV

INTERIOR SPECIFICATIONS

RE: Bid 8477F
29 Oct 71

QUALTECH NDT A Tennaco Company

I N D E X

SECTION I	INCOMING INSPECTION & PRESERVATION
SECTION II	INTERIOR
SECTION III	AVIONICS
SECTION IV	MISCELLANEOUS
SECTION V	TERMS AND CONDITIONS

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A Tenneco Company

SECTION I.....

INCOMING INSPECTION & PRESERVATION

QUALITRON AERO A Tenneco Company

INCOMING INSPECTION & PRESERVATION

INCOMING INSPECTION

Prior to performing any work on the aircraft after arrival at the facilities of Qualitron Aero, a careful inspection will be made jointly by representatives of Qualitron and Skyway Leasing, and all items of damage or any discrepancies including flight 'squawks' reported by the flight crew will be listed. All loose equipment, parts, etc. aboard the aircraft will be inventoried on a standard Qualitron form.

CORRECTION OF DISCREPANCIES

Correction of aircraft discrepancies which are not the result of any action on the part of Qualitron or its employees is not a part of this Specification. Qualitron will advise the Skyway Leasing representative of any discrepancies, including incoming and any found prior to final acceptance of the aircraft. Skyway Leasing will advise Qualitron as to the disposition of these discrepancies. Work orders will be released on a time and material basis to accomplish correction of discrepancies and will include a description of the task, part numbers, serial numbers, warranty claim numbers, etc.

Preservation

After inventory and incoming inspection, the aircraft will be preserved and prepared for modification as follows:

1.3.1 Aircraft Engines

The aircraft and engines will be preserved for short time storage in accordance with applicable manufacturer's specifications.

Safety ground locks will be installed on the main and nose landing gear.

1.3.2 Batteries

The storage batteries will be removed, stored and kept in a charged condition until reinstallation in the aircraft with deep cycle charging prior to final delivery.

1.3.3 Fire Extinguishers

The aircraft's fire extinguishing system will be disconnected prior to start of work and will be reconnected just prior to final delivery of the aircraft.

1.4 WEIGHT AND BALANCE

The aircraft will be weighed prior to commencement of work and again after the completion of the project. Weight and Balance Forms, Equipment List and Loading Schedule will be revised into a standard loading format.

Affidavit

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QUALITY OIL A Tenneco Company

TION II .....

INTERIOR

QUALITRON /NECO A Tenneco Company

2.0 INTERIOR

The passenger cabin shall provide accomodations for passengers in accordance with the approved floorplan drawing. All work will be performed in accordance with F.A.A. approved engineering drawings. All modifications will meet or exceed these requirements.

Qualitron will maintain a high standard of quality and excellent workmanship in order to achieve the results desired. Ingenuity will be used to eliminate extra weight, but weight will not be saved at the expense of basic quality and service requirements.

Care will be taken in selecting and matching finishes and colors. No visible area will be left unfinished. The means of fastening will not be visible in the installation. Uniformity in the various surface treatments will be strived for.

All inspection areas will be easily accessible, both in flig and on ground with a minimum of disturbance to interior furnishing. The lightest method of construction feasible will be used in all areas.

All materials will conform to FAR 121.

2.1 COCKPIT

The cockpit area encompasses that portion of the fuselage forward of the factory installed bulkhead located at approximate Station 294.5.

A Teledyne Company

.1 Sidewall

The factory installed panels will be recovered or painted with materials per the approved Fabric and Color Chart.

1.2 Cockpit Floor

The cockpit floor will be covered with carpet as indicated in the approved Fabric and Color Chart. The carpet will extend aft to bulkhead Station 294.5 and will be attached to the floor by Velcro tape. Stainless steel heel plates will be provided beneath the rudder pedals.

1.3 Cockpit Seats

The presently installed cockpit seats will be removed and reupholstered in accordance with the approved Fabric and Color Chart. The metal portions of these seats will be painted to harmonize with the new covering fabric. Safety belts and shoulder harness presently installed with the pilot's seat will be used.

.4 Paint

a. The cockpit will be painted where necessary to match the surrounding interior decor.

ENTRANCEWAY

The entranceway will encompass that area between the cockpit bulkhead at approximate Station 294.5 and the forward cabin bulkhead. The fabrics, vinyls, woodwork, carpet and paint in this area will be in accordance with the approved floor plan and Fabric and Color Chart.

CONTINENTAL AIRLINES A Texaco Company

2.3 FORWARD LAVATORIES

The existing forward lavoratories will be refurbished. The fabrics, vinyls, woodwork, carpet and paint in this area will be in accordance with the approved floorplan and Fabric Color Chart.

2.3.1 Toilet and Enclosure

The existing toilet enclosure will be fitted with a hinged padded lid giving it a bench type seat appearance. The padded lid will be covered per the approved Fabric and Color Chart.

2.3.2 Vanity

The existing vanity cabinet vertical face will be covered per the approved Fabric and Color Chart.

2.3.3 Storage

Additional storage space will be provided in the lower vanity cabinet for oral medications and shaving equipment.

2.4 CREW AREA

The crew area encompasses that area between the main entranceway and Station 460. The materials and finishes used throughout the crew area will be per the approved Fabric and Color Chart.

2.4.1 Crew Area Seating

The crew area seating will consist of one (1) double chair aft facing and one (1) double chair fwd facing. Each chair will be equipped with reclining backs and have a roll at the edge of the lower cushion for improved seat comfort.

GULFSTREAM AERO A Tenneco Company

.1 Continued

Provisions will be made under each chair for additional storage of loose equipment and life vest.

.2 Crew Table

Qualitron Aero will design, fabricate and install a removable table with fixed console support cabinet between the two attached to the seat rail. The table top will have fold up leaves for access to seat. Top surface will be inlaid with leather insert panels.

4.3 Air and Light Panel

An air and light panel will be fabricated and installed at each seat location. This panel will include passenger reading lights, air outlet and ozygen boxes.

.5 FORWARD BAGGAGE AND COAT COMPARTMENT

A coat closet/baggage area will be fabricated and installed on the lefthand side of the aircraft between approximate Stations 460 and 520. The materials and finishes used in this area will be per the approved Fabric and Color Chart. The baggage area will have three shelves properly spaced to accommodate hand luggage.

A baggage retaining webbing will be provided for each shelf. The underside of each shelf will be illuminated and the lights will be controlled from a switch located outside the compartment. A smoke detector will be installed in this area.

The coat compartment will have two coat rods installed forward and aft. They will be properly spaced to accommodate [illegible]. Provisions will be made for a 12"

[illegible] A Teledyne Company

2.5 Continued

deep drawer in lower area of compartment.

The baggage and coat compartment area will be closed off by means of a tracked drape.

2.6 FORWARD LIGHTHAND GALLEY

A galley will be designed, fabricated and installed on the forward right side of the aircraft at Station 380. The galley will be constructed of sheetmetal, wood and covered with Plastic Laminate in accordance with the approved fabric and color chart. All cabinet doors will have recessed pulls and positive locks. The galley will be fabricated in accordance with the approved design.

2.6.1 Galley Equipment

The following galley equipment will be provided:

a. One (1) Warming Oven
b. One (1) Broiler
c. One (1) Oven
d. One (1) removable locked Ice Chest
e. Drip tray with water supply
f. Trash Provisions
g. Surface work lights
h. Misc. Storage
i. Hardwood chopping block
j. Four (4) Electric outlets
k. Galley control panel
l. Foot and hand hold provisions
m. One (1) Refrigerator
n. Recess in Galley top for electric frying pan.
o. Provisions for locking liquor and custom cards.

GULFSTREAM AERO A Tenneco Company TENNECO

AFT RIGHT GALLEY

A galley will be designed, fabricated and installed on forward right side of the aircraft just aft of the forward galley at Station 460. The galley will be constructed of sheetmetal, wood and fiberglass. The exposed surface of the galley will be covered with plastic laminate in accordance with the Approved Fabric and Color Chart. All cabinet doors will have recessed pulls and positive locks. The galley will be fabricated in accordance with the approved design.

2.7.1 Galley Equipment

The following galley equipment will be provided:

a. Two (2) Mapco liquid containers, two gallon.

b. Surface work lights.

c. Two (2) Hot Cups with Timer

d. Foot and Handhold Provisions

e. Provision for miscellaneous storage

f. Three (3) electrical outlets.

g. Trash Provisions

h. A refreshment bar servicing area with provisions for open liquor bottles, ice and bar tools.

i. Galley control panel.

j. The existing master interphone station will be relocated.

2.7.2 Galley Floor Area

The galley floor area will be covered with an expanded vinyl floor covering.

(GRUMMAN) AMC A Tenneco Company

2.8 FORWARD CABIN AND DINING AREA

The forward cabin and dining area enclosure encompasses that area between the forward cabin bulkhead and Station 660L. The bulkheads and interior accessories will be constructed so as to be as light in weight as possible. The materials and finishes used throughout the area will be per the approved Fabric and Color Chart.

2.8.1 Headlining

The existing headliner panel will be in vinyl. The material used will be per the approved Fabric and Color Chart.

2.8.2 Air and Light Panel

An air and light panel will be designed, fabricated and installed. This panel will include passenger reading lights and air outlets for each seat location in the area. Each air outlet will be connected to an air duct connected to the factory installed distribution system.

In addition to the passenger air and light service, oxygen boxes are to be provided in these overhead panels. Indirect lighting will be provided above the air and light shroud which will form a handrail extending the length of the cabin both left and right hand sides.

2.8.3 Dado Panels

The existing Dado Panel will be covered in materials as per the approved Fabric and Color Chart.

A Tenneco Company

2.8.4 Window Reveals

The window reveals will be painted to match the adjacent area.

2.8.5 Curtain Valance

A upper curtain valance will be designed, fabricated and installed over the existing factory downward lighting.

2.8.6 Window Curtains

A curtain track will be installed on the upper Dado Panel and Lower Valance section.

Window curtains will be fabricated and installed between windows the entire length of the cabin using fabrics per the approved Fabric and Color Chart.

The curtain will be fixed in position between windows to maintain a uniform appearance and will not be required to slide over windows, since shades are installed at each window.

2.8.7 Cabin Floor Covering

Carpet per the approved fabric and color chart will be installed within the cabin area. A vinyl foam pad will be bonded to the carpet and exposed edges will be serged.

The following additional items will be provided:

a. Bound throw rugs

b. Aisle maintenance runner.

2.8.8 Ordinance Signs

Flush mounted No Smoking/Fasten Seat Belts signs will be installed in the forward and aft bulkheads. An electronic tone will be audible on cabin public address system when the passenger warning signs are selected.

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2.9 CABIN CHAIRS

Six single and two double chairs will be installed in the fwd cabin and dining area. Each chair will be equipped with reclining backs, lateral fore and aft tracking (on [illegible] and seat belts. Each aft facing seat will be equipped with headrest extensions. The chair will be covered with materi per the approved Fabric and Color Chart. The chair will be located per the approved Floor Plan.

2.9.1 Divan

A divan 78" in length will be installed in the aft left hand section of the cabin area. The divan will be constru with four (4) separate back and one (1) seat cushion. Th (3) seat belts and one (1) sleeping belt will be installed. Removable arm rest will be installed at each seat position and contain ashtray and drink holders. The armrest will ha provisions for plug in eating trays.

2.10 FORWARD CABIN AND DINING AREA FURNITURE

The area furniture will consist of the following:

a. One (1) round conference table.

b. One (1) console type conference table.

c. One (1) console type table.

d. Divan end cabinets

e. Lower window ledge

f. Book Case with Instruments located on inboard aisle s

g. Lamps

h. Ledge that extends down to floor and have storage pro both right and left side.

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Continued

i. Provisions for magazines, newspapers, etc.

The furniture and cabinetry will be fabricated utilizing material that either meets or exceeds the requirements as set forth in FAR Part 121 and the approved Fabric and Color Chart. All doors and drawers will incorporate positive push button latches and recessed pulls. The interior of all doors and drawers will be painted as outlined to match the exterior. All furniture will be installed in accordance with the approved Floor Plan.

10.1 Master Control Console

A master control console will be designed, fabricated and installed at approximate Station 600 on the righthand side of the aircraft. The console will incorporate the following:

a. Interphone
b. Cabin Lighting Control
c. Cabin Speaker Control
d. Call Button
e. Provisions for HF Telephone System

10.2 Wine Holder

Just aft of the master control console provisions will be made in the top of the storage ledge for a wine bottle holder with a removable ice liner or pocket.

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2.10.3 Movie Screen and Projector

Provisions will be provided for a movie screen at the forward area of the dining compartment. A projector will be located as high as possible in the aft area as to afford maximum viewing.

2.10.4 Decorative Painting

A decorative painting will be installed on the aft side of the forward left hand cabin bulkhead.

2.10.5 Headsets

Provisions for four (4) stereo headsets will be provided in the main cabin and dining area. Location will be in accordance with the approved floor plan.

2.11 - Discotheque Area

The discotheque area enclosure encompasses the area between the forward cabin aft bulkhead and Station 880. The materials and finishes used throughout the area will be per the approved Fabric and Color Chart.

2.11.1 Headlining

The existing headliner panels will be covered in vinyl. The material used will be per the approved Fabric and Color Chart.

2.11.2 Oxygen Panel

Oxygen boxes are to be provided in this area. Air and reading lights will not be installed in the discotheque area.

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.3 Dado Panels

The existing Dado Panels will be covered in materials as per the approved Fabric and Color Chart.

.4 Window Reveal

The window reveals will be painted to match the adjacent area.

1.5 Curtain Valance

An upper curtain valance will be designed, fabricated and installed over the existing factory downward lighting.

1.6 Window Curtain

Window curtains will be fabricated and installed between windows the entire length of the discotheque area, using fabrics per the approved Fabric and Color Chart. The curtains will be installed so they can track over the entire window area, and give the window line area a full drape appearance.

11.7 Floor Covering

Carpet per the approved Fabric and Color Chart will be installed within the discotheque area in approximately the center of the discotheque area. A hard wood dance floor will be fabricated and installed per the approved floor plan drawing.

?.12 Discotheque Chairs

The discotheque chairs will be installed per the approved Floor Plan. Two (2) easy chairs, two (2) lounge chairs and three stool type chairs will be provided from the platner collection of Knoll Associates. The easy chairs

QUALITRON AERO A Tenneco Company

2.12 Continued

will be equipped with swivel bases and the chairs will be covered per the approved Fabric and Color Chart.

2.12.1 Divan

Qualitron Aero will fabricate and design a four (4) place divan in keeping with the Platner collection of Knoll Associates design. The divan will have removal armrest, four (4) seat belts and one (1) sleeping belt. The divan will be covered in materials per the approved Color Chart.

2.13 Discotheque Area Furniture

The area furniture will consist of the following:

a. One (1) Coffee Table 24" Diameter (Knoll Associates)

b. One (1) Coffee Table 42" in Diameter (Knoll Associates)

c. One (1) end cabinet

d. One (1) servicing Bar

e. One (1) entertainment center cabinet with control center for rhythm lights

f. One (1) wine rack storage area

g. Movie screen and projector

The furniture and cabinetry will be installed per the approved plan. All doors and drawers will incorporate positive push button latches and recessed pulls. The interior of all doors and drawers will be painted as outlined to match the exterior.

A Tenneco Company

3.1 Wine Rack Storage Area

A wine rack and storage area will be designed, fabricated and installed on the right hand forward bulkhead in the discotheque area. Storage provisions will be made for wine bottles and miscellaneous bar supplies on each side of the upper wine rack unit. Rhythm lights will be installed providing a dynamic sweep of endlessly shifting patterns in varicolored lights.

13/2 Servicing Bar

A servicing bar will be designed, fabricated and installed just forward of the wine rack area.

The bar will incorporate the following provisions:

a. Glass Storage

b. Provisions for Ice

c. Drip Pan

d. Bottle Storage

e. Miscellaneous Storage

f. Padded roll on bar top face

2.13.3 Entertainment Center

An entertainment center will be designed, fabricated and installed per the approved floor plan. The entertainment center will have provisions for the following:

a. One (1) Altec's Lansing 714 Stereo Receiver

b. One (1) Sony Model 165 Automatic Reverse stereo Cassette Deck

c. One (1) Rhythm and Black Lighting Control Panel

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2.14 OFFICE AREA

The office area enclosure encompasses that area between the aft discotheque area bulkhead and approximately Station 1060. The materials and finishes used throughout the area will be per the approved Fabric and Color Chart.

2.14.1 General Interior

The same general interior appearance as called out in the forward cabin and dining area specifications will apply to this area.

2.14.2 Office Seating

Six single chairs will be installed in the office area. Each chair will be equipped with reclining back, lateral fore and aft tracking (on base) and seat belts. Each aft facing seat will be equipped with headrest extensions. The chairs will be covered with materials per the approved Fabric and Color Chart. The chairs will be located per the approved floor plan.

2.14.3 Divan

A three place divan will be installed in the aft right hand section of the office area. The divan will be constructed with three (3) separate backs and one seat cushion. Removable armrest will be installed at each seat position and contain ashtray and drink holder.

2.14.4 Office Furniture

The office area furniture will consist of the following:

a. One (1) console type table

b. One (1) master desk

c. One (1) Coffee Maker

(GULF OIL CORP.) A Tenneco Company

14.4 Continued

d. Two (2) Secretary Desks with provisions for typewriters.

e. Storage ledge both right and left hand sides of office with side mounted filing cabinets.

f. One (1) Credenza

g. Lamps

All furniture will be fabricated per the approved design and installed per the approved floor plan.

A Ferranco Company

2.15 Master Bedroom

The master bedroom enclosure encompasses that area between the aft office area bulkhead and approximate Station 1170. The materials and finishes used throughout the area will be per the approved Fabric and Color Chart.

2.15.1 General Interior

The same general appearance as called out in the forward cabin and dining area specifications will apply to this area.

2.15.2 Master Bedroom Chair

One single chair will be installed in the master bedroom. The chair will be equipped with reclining back, lateral fore and aft tracking (on base) and seat belts. The chair will be equipped with headrest extensions. The chair will be covered with materials per the approved Fabric and Color Chart. The chair will be located per the approved floor plan.

2.15.3 Berthable Sleeping Divan

A berthable hide-away sleeping divan will be installed across the aft area of the bedroom. The divan will be covered with materials per the approved color chart.

2.15.4 Master Bedroom Furniture

The master bedroom furniture will consist of the following:

a. One coffee table

b. Storage ledge

c. Wardrobe Area

d. Lamp

All furniture will be fabricated per the approved design and installed per the approved floor plan.

GRUMMAN AEROSPACE A Tenneco Company

Aisle and Storage Area

An aisle will be formed by the master and guest bedroom bulkheads running fore and aft on the left side of the aircraft from the aft office bulkhead to approximately Station 1290.

A storage cabinet will be designed, fabricated and installed along the left side of the aisle. Storage provisions for blankets, pillows, and miscellaneous items will be provided.

GUNTHER-NEL A Tenneco Company

2.17 Guest Bedroom

The Guest bedroom area enclosure encompasses that area between the aft master bedroom bulkhead and approximately Station 1290. The materials and finishes used throughout the area will be per the approved Fabric and Color Chart.

2.17.1 General Interior

The same general appearance as called out in the forward cabin dining area will apply to this area.

2.17.2 Guest Bedroom Chairs

Two single chairs will be installed in the Guest Bedroom area. Each chair will be equipped with reclining back, lateral fore and aft tracking (on base) and seat belts. Each chair will be equipped with headrest extensions. The chair will be covered with materials per the approved Fabric and Color Chart. The chairs will be located per the approved floor plan.

2.17.3 Berthable Sleeping Divan

A berthable hideaway sleeping divan will be installed across the aft area of the bedroom. The divan will be covered with materials per the approved color chart.

2.17.4 Guest Bedroom Furniture

The guest bedroom furniture will consist of the following:

a. One (1) Coffee Table

b. Storage Ledge

c. Lamps

All furniture will be fabricated per the approved design and installed per the approved floor plan.

A Tenneco Company

2.18 Exercise Area

The exercise area enclosure encompasses the area between the aft guest bedroom bulkhead and approximately Station 1380. The materials and finishes used throughout the area will be per the approved Fabric and Color Chart.

2.19 Sauna

A sauna bath will be designed, fabricated and installed in the aft righthand area between approximate Stations 1300 to 1397. The interior walls will be redwood and the exterior will be per the approved color chart.

The temperature will be thermostately controlled. Heat will be provided by a Metos MW5B Sauna Wall Heater.

2.20 Soaking Bath and Shower

A soaking bath and shower facility will be installed in the aft lefthand area between approximate Stations 1380 to 1440. The area will be finished in materials per the approved Color Chart.

2.21 Aft Lavatory

The existing aft lavatory will be refurbished. The fabrics, vinyls, woodwork, flooring and paint in the area will be per the approved Floor Plan and Color Chart.

SECTION III .....

A V I O N I C S

QUALITRON INDUSTRIES A Tenneco Company

0 AVIONICS

1 Electrical/Avionics

The following electrical/avionics installations will be accomplished as defined herein.

.1.1 Kitchen (Galley)

In Phase I of the retrofit program the existing Galley area, forward will be retrofitted with a Qualitron designed kitchen as defined in this Specification. The following Electrical/Avionics installation will be a part of this conversion kit.

.1.2 AC Outlets

A total of seven standard double socket electrical outlets will be provided in the kitchen area, adjacent to the counter tops. These outlets will be 115 VAC, 60 CPS for compatibility with standard electrical appliances; frying pans, mixers, toasters, etc.

3.1.3 Lighting Kitchen Area

A minimum of four fluorescent light fixtures mounted over the counter tops, will provide lighting for the counter work area. Each of these lights will be separately switched on and off. Three wide-angle, adjustable, spot-lights will be installed for additional lighting of the counter work area. Each of the spot-lights will be individually switched on and off. Two aircraft standard overhead light fixtures will be installed to light the general kitchen area. These lights will be switched on and off with switches located at the entrance way to the kitchen area.

(GRAMMER AERO) A Tenneco Company

3.1.4 Electrical Appliances

Electrical connectors will be provided to the Refrigerator, Baking Oven, Warming Oven, and Broiler Oven to provide 110 VAC and 220 VAC as required.

3.1.5 Electrical Protection Panel

A circuit breaker panel will be installed in the kitchen area to provide electrical overload protection for:

AC Outlets 110 AC

Lighting 28 VDC and 110 VAC

Baking Oven

Broiler Oven

Refrigerator

3.1.6 Intercomm and Paging System

An intercomm system will be installed in the kitchen area that provides the following functions:

Handset Phone operation to the Cockpit

Dining Room, Office and Bedroom

Paging to All Cabin Areas

3.1.7 Intercomm, Page Operation

The Intercomm System will be installed so that operation of a series of lighted push button switches will select which areas will be called by means of a standard telephone type handset or be paged through speakers located in each area.

3.1.8 Intercomm Control Panel

Interphone Switch - A lighted push button switch will select interphone handset operation. Activation of this switch will provide control of the handset to the station desiring to call another station.

(GRAFLEX) A Tenneco Company

.9 Paging Switch

A lighted push button switch will select the operation of the paging system amplifier. The paging system then can be activated through the telephone handset to the Paging Speaker in the individual cabin areas as a function of the Area Selector Switches.

1.10 Area Selector Switches

A series of lighted push-button switches are to be provided to select the individual cabin areas to be contacted by interphone or page. Activation of any or all of these switches after the Interphone Switch has been selected will allow the individual or collective "calling" of each area. Each Control Station will be equipped with a call chime and flashing "call" light which will alert the station being called on Interphone.

The Area Selector switches will function in a similar manner after the paging switch has been activated, in that each or all of the individual areas may be paged through the area paging speakers.

.1.11 Chimes and "Call" Light

An electric chime and flashing "Call" light will be located on the control panel which will be activated by the calling stations area selector switch.

A Teledyne Company

3.2 CABIN INSTRUMENTS

3.2.1 The cabin instruments will be located in the inboard end of the bookshelf. These instruments will include the following:

a. Air Speed Indicator for Aircraft Ground Speed
Consolidated Inst. Co. #66-6201

b. Dual Temperature Indicator for Inside and Outside Temperature
Consolidated Inst. Co. #200-OCAT-50-120

c. Altimeter For Aircraft Altitude
Consolidated Inst. Co. #C69-ALT-0-505

d. Compass Heading Indicator
Consolidated Inst. Co. #669-926-6

The cabin instruments will have an edge lighted overlay to compliment the aircraft interior.

SECTION IV.....

MISCELLANEOUS

(QUALITRON) A Teledyne Company

4.0 MISCELLANEOUS

4.1 This area has not been discussed but Qualitron is recommending Air Stair Doors and an Auxiliary Power Unit. If requested, pricing and scheduling for these additional items will be submitted to Skyway Leasing under separate contract.

A Tenneco Company

TION V .....

TERMS AND CONDITIONS

QUALITRON AERO A Tenneco Company

5.0 TERMS AND CONDITIONS

5.1 Scope and Classification

This Specification supersedes any and all prior agreements between

QUALITRON AERO, INCORPORATED
A Subsidiary of Tenneco Incorporated

hereinafter known as Qualitron, and

SKYWAY LEASING CORPORATION

hereinafter known as "Customer", whether oral or written for the completion of Customer's

Boeing 707/321 Aircraft

hereinafter known as "Aircraft." This Specification shall not be varied except by an instrument in writing subsequent to date hereof, executed by both Customer and Qualitron. All attachments appropriately referenced herein are hereby incorporated in and made a part of this Specification.

5.2 GOVERNING REQUIREMENTS

5.2.1 Work Performance Standards

The work on this aircraft as outlined in this Specification and as performed by Qualitron, will be in accordance with Federal Air Manuals as applicable. Proof of compliance will be submitted to FAA by Qualitron. The installation of items not covered by Federal Air Regulations and Bulletins will be in accordance with Qualitron's standard practice and/or accepted standards of the industry.

2.2. Engineering, Drawings and Other Data

2.2.1 Qualitron's Drawings for custom interior for Customer's Aircraft.

2.2.2 Qualitron Fabric and Color Chart, approved by Customer.

3 Customer Supplied Services, Materials and Data

3.1 Aviation Fuel .

Qualitron will provide such aviation fuel and oil as required to complete the work specified herein and to conduct such delivery and test flights as provided herein. Charges for such aviation fuel and oil will be paid for by the Customer as an additional item.

3.2. Customer Furnished Property

One (1) each Aircraft, Registration No. N11EV. Other miscellaneous materials as noted in body of specification.

3.3 Flight Crews

Customer will furnish the flight crew as necessary for all flight testing of the aircraft upon completion of the work as specified herein.

4 Aircraft Insurance

Qualitron will not be liable for any loss or damage to said aircraft unless said loss or damage is occasioned by the fault or negligence of Qualitron while the aircraft is in possession of Qualitron on the ground. Customer may provide, at its sole expense, any insurance coverage it desires covering said aircraft during such time.

QUALITRON/MELO A Tenneco Company

5.4 Continued

Customer will provide at its cost all insurance required to cover the delivery of the aircraft to the delivery point designated by Customer as Fort Worth, Texas. Said insurance shall cover the fair market value of the aircraft and the contract price of the modification as provided in these specifications. Customer shall provide Qualitron with certificate of said insurance policy or policies prior to Qualitron's delivery flight.

5.5 Qualitron Furnished Services, Materials and Data

5.5.1 Engineering

Qualitron will prepare all the detailed engineering and stress analysis necessary for the completion of the work outlined herein except as otherwise noted.

5.5.2 Labor and Materials

Qualitron will perform all labor and furnish all material necessary for the completion of the work outlined herein except as otherwise noted.

5.5.3 Drawings and Other Data

Upon completion of the work specified herein, Qualitron will furnish with the Aircraft two (2) sets of electrical and radio diagrams covering additions made by Qualitron, a corrected copy of the existing Weight and Balance Report, a list of added and deleted equipment and a new loading schedule.

QUALITRON INC. A Tenneco Company

5.4 F.A.A. Approved Forms

Upon completion of the work specified herein, Qualitron will furnish with the aircraft all necessary F.A.A. forms properly filled out and approved by the appropriate F.A.A. inspector.

5.5 Predelivery Check of Aircraft

After all work called for in the specification has been accomplished and accepted by Customer, prior to turning the aircraft over to the Customer's designated flight crew at the point of delivery, a preflight runup of the engines will be accomplished by Qualitron. During this runup the function of instruments, units and systems in the aircraft will be checked. Any discrepancies or malfunctioning which are not the result of any action on the part of Qualitron or its employees and which the Customer's representatives desire to have corrected, shall be corrected on a time and material basis. The inventory of loose equipment made during the incoming inspection will be checked to make certain all items are aboard the aircraft.

5.6 Delivery

When the work has been completed as outlined herein, Qualitron will deliver the aircraft to the Customer at Fort Worth, Texas. Qualitron will use its best efforts to comply with the delivery schedule quoted; however, Qualitron will not be in default hereunder and no liability is assumed for any changes in delivery schedule due to any cause not reasonably within the control of Qualitron.

A Tenneco Company

5.5.7 Quality, Workmanship and Warranties

5.5.7.1 Qualitron warrants that the articles delivered hereunder conform to final Specifications, drawings and other description agreed in writing to be applicable and are free from defects in materials and workmanship. These warranties shall run to the Customer, its successors, assigns, and Customers. No warranty is given with respect to any unit fuenished by the Customer or to any instrument, component, accessory, or part which are not manufactured by Qualitron.

Qualitron shall endeavor to obtain the best possible warranties from its vendors in favor of Qualitron and/or Customer and shall, in the event of defect, endeavor to obtain the best adjustment possible for the benefit of the Customer.

5.5.7.2 The responsibility of Qualitron hereunder, and the sole and exclusive remedy of Customer, its successors, assigns, or Customers for a breach of any warranty hereunder, is limited to, correction or replacement by Qualitron at any facility owned by Qualitron, whichever is so designated by Customer without charge, any article or part which has been returned to Qualitron and provided, however, (a) Qualitron must be notified in writing of the defect or nonconformity within the warranty period and the affected article or part

(QUALITRON) A Teledyne Company

5.7.2 (Continued)
returned to Qualitron within thirty (30) days after discovery of such defect or nonconformity; and (b) if Qualitron is unable to repair or replace defective or nonconforming articles or parts within a reasonable time after receipt thereof, Customer shall be credited for their value at the original purchase price.

5.7.3 Qualitron shall have the sole right to determine whether returned articles or parts shall be credited for their value at the original purchase price.

5.7.4 Qualitron responsibility under these warranties shall expire after 1000 aircraft operation hours or twelve (12) months after delivery of the original article to the Customer, whichever is earlier. Replacement of any article pursuant to this warranty will not extend the aforementioned warranty period beyond that period still remaining on the original article.

5.7.5 Qualitron agrees to assume round-trip transportation costs for defective or nonconforming articles or parts in an amount not to exceed normal railroad shipping charges within the Continental United States, provided, however, that if Qualitron's inspection discloses that the returned article or part does not require repair or replacement, Customer shall be liable for Qualitron's usual charges for inspection, breakdown and reassembly time for round trip shipping charges.

5.7.6 These warranties will not apply if the articles or any components thereof have been subject to (a) maintenance, overhaul, installation, storage, operation, or use, which is improper or not in accordance with Qualitron's instruction; (b) any alteration,

A Tenneco Company

5.5.7.6 (Continued)

modification, or repair by anyone other than Qualitron or its authorized representative or repair facilities authorized und Paragraph 5.5.7.2; or (c) any accident, misuse, neglect or neglience after delivery by Qualitron. The warranty shall not apply to any article to the extent that the defect or non conformity is attributable to any part not supplied by or approved by Qualitron.

5.5.7.7 Qualitron's obligations under these warranties are condition on Customer's obligation to maintain records which will accur reflect operating time and maintenance performed on Qualitron equipment and establish the nature of any unsatisfactory con dition of Qualitron's equipment. Qualitron, at its request, be given access to such records for substantating warranty claims.

5.5.7.8 ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, SUCH AS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTI PURPOSE ARE HEREBY EXCLUDED AND DISCLAIMED TO THE EXTENT THA THEY EXCEED THE WARRANTIES GRANTED HEREIN. IN NO EVENT SHAL QUALITRON BE LIABLE FOR CONSEQUENTIAL OR INCIDENTIAL DAMAGES

5.5.7.9 No agreement extending this warranty shall be binding upon Qualitron unless in writing and signed by a duly authorized officer or representative.

5.6 TITLE

Title to all parts and materials that will be installed in the Airplane regardless of the manner of affixation or installation therein, shall not pass to the Customer or any other person, firm or corporation until the delivery of sai

QUALITRON AERO A Teledyne Company

Continued

Airplane to the Customer and Customer has paid Qualitron for services and material furnished by Qualitron.

TAXES

Any taxes applicable to this sale will be paid directly by Skyway Leasing Company to the collecting agency or agencies. Where the taxes are collected and paid by Qualitron, Customer agrees to reimburse Qualitron upon receipt of invoice for same.

CHANGES OR MODIFICATION TO THE SPECIFICATIONS

Additions and/or deletions above the interior requirements may be made to the detailed work specification set forth herein. When such changes are made, an equitable adjustment in both the contract price and the delivery date will be made and accepted by both parties prior to performance of any work on the aircraft involving the changes.

REPRESENTATION

Qualitron agrees that the representatives of the Customer and Boeing Aircraft will have reasonable access to Qualitron's facility and the aircraft while the work is being accomplished. Qualitron regulations concerning employees and facilities will be observed by such representatives. Contact with Qualitron production employees will not be permitted and the Customer representatives will deal only with the authorized personnel of Qualitron. Customer's representatives shall not have any access to any portion of Qualitron's facilities which may be restricted by U.S. Government security regulations.

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5.10 MODE OF PAYMENT/PRICING

Total contract pricing for the attached specifications is not to exceed $350,000 plus any applicable taxes, F.O.B. Fort Worth, Texas. Pricing will be based on materials and outside services at cost plus 15% and labor at a straight time rate of $9.75 per hour, overtime rate of $12.75 per hour and double-time rate for holidays and Sundays of $14.25 per hour. Labor and materials will be billed on a monthly basis with balance due on completion of Phase I, kitchen and main dining area, and Phase II, all other areas. Materials will be itemized with invoice and computer runs on labor will be opened for inspection in Fort Worth.

SKYWAY LEASING COMPANY

By_____

_____

Title

_____

Date

QUALITRON AERO, INCORPORATED

By: _____

_____

Title

_____

Date

WORK ORDER

Qualiflyer Aero

A Qualiflyer Company

PROJECT ENGINEER

LEAD OR TROUBLESHOOTER LEAD

NAME

ADDRESS

CITY STATE ZIP CODE

MAKE

MODEL SERIAL NO.

DISTRIBUTION

Master [W] Spec File [S] Accounting [A]

Production [P] Prod Lead [PL]

SPECIAL INSTRUCTIONS:

The undersigned authorizes Qualiflyer Aero, Inc. to repair, or maintain, [illegible] items listed, and to perform, at the owner's risk, [illegible] as necessary to make full payment of all charges [illegible] Arrangements for work at time of acceptance and delivery of no later than 10 days after notification that aircraft is ready. An express mechanic's lien is acknowledged on aboard aircraft to secure amount of work and materials. It is understood that Qualiflyer Aero, Inc. assumes no responsibility for loss or damage to aircraft or personal property placed with it for storage, sale, testing, or repairing.

Affidavit

243a

82nd Meeting
Board of Directors

MINUTES OF A SPECIAL MEETING
OF THE BOARD OF DIRECTORS OF
INTERNATIONAL CONTROLS CORP.

A Special Meeting of the Board of Directors of the Corporation was held at 5:00 p.m. on December 8, 1971, at the corporate offices, 200 Fairfield Road, Fairfield, New Jersey.

The following directors were present at the meeting:

Robert L. Vesco
Stanley Hiller, Jr.
Malcolm E. McAlpin
Merle Thorpe, Jr.
Wilbert J. Snipes
Ralph P. Dodd
Frank G. Beatty

constituting a quorum.

Also attending at the invitation of the Board of Directors were:

Shirley E. Bailey, Secretary of the Corporation

Sherwin J. Markman of Hogan & Hartson

Gary E. Benjamin, Controller of the Corporation

Charles J. Egan, Jr., General Counsel

Robert L. Vesco, Chairman of the Board of Directors, acted as Chairman of the meeting, and Shirley E. Bailey, Secretary of the Corporation, acted as secretary of the meeting.

The Chairman presented a Waiver of Notice signed by the directors and ordered it to be filed with the minutes of the meeting.

The Chairman called on Mr. Markman to give a report on the status of the Tucker complaint in the Swiss criminal action against Milton F. Meissner, Ulrich J. Strickler and the Chairman.

The Chairman then gave a report on his negotiations with the Charter Corporation and the estate of A. I. DuPont relating to the Corporation's investment in I.O.S., Ltd.

The Chairman then reported to the Board regarding a plan for settlement of the loan by ICC Investments Limited to I.O.S., Ltd.

The Chairman next reported that Fairfield General Corporation, a New Jersey corporation, had been formed and he proposed that the shares of Fairfield Aviation Corporation be transferred to Fairfield General Corporation in return for 379,831 shares of Fairfield General Corporation and that the shares of Fairfield General Corporation be distributed to the stockholders of International Controls Corp. Upon motion duly made, seconded and unanimously carried, it was

RESOLVED, that International Controls Corp. exchange all 379,831 outstanding shares of Common Stock of Fairfield Aviation Corporation for 379,831 shares of Common Stock of Fairfield General Corporation upon original issuance, so that Fairfield Aviation Corporation will then be a wholly-owned subsidiary of Fairfield General Corporation, which in turn will then be a wholly-owned subsidiary of International Controls Corp.; and the actions of the officers of International Controls Corp. in effecting such exchange are hereby ratified and approved in all respects.

RESOLVED, that the dividend in kind of one share of Common Stock of Fairfield Aviation Corporation for each ten outstanding shares of Common Stock of International Controls Corp. declared by the Board of Directors of International Controls Corp. on November 13, 1971, is hereby modified by substituting one share of Common Stock of Fairfield General Corporation in place of one share of Common Stock of Fairfield Aviation Corporation as such dividend in kind for each ten outstanding shares of Common Stock of International Controls Corp.

RESOLVED, that holders of Common Stock of International Controls Corp. who would otherwise receive fractional share interests in Fairfield General Corporation (as a result of owning an aggregate number of shares of Common Stock of International Controls Corp. not evenly divisible by ten) shall be paid cash in lieu of such fractional share interests based upon the $2.64 book value per share of the Common Stock of Fairfield General Corporation at September 30, 1971.

RESOLVED, that Fairfield General Corporation shall issue 379,831 shares of its Common Stock to International Controls Corp. in exchange for the 379,831 outstanding shares of Common Stock of Fairfield Aviation Corporation, so that Fairfield Aviation Corporation will then be a wholly-owned subsidiary of Fairfield General Corporation, which in turn will then be a wholly-owned subsidiary of International Controls Corp. and the actions of the officers of Fairfield General Corporation in effecting such issuance are hereby ratified and approved in all respects.

RESOLVED, that the above-mentioned 379,831 shares of Common Stock shall be validly issued, fully paid and non-assessable upon receipt of the above-mentioned 379,831 shares of Common Stock of Fairfield Aviation Corporation from International Controls Corp.

It was next proposed that the actions of the Corporation in making certain contributions to the capital of Fairfield Aviation Corporation, in leasing or purchasing certain aircraft and general air taxi service from Skyways Leasing Corporation, and in entering into certain agreements with Fairfield General Corporation be approved and ratified. Following a full discussion and upon motion duly made, seconded and unanimously carried, it was

RESOLVED, that the corporation contribute to the capital of Fairfield Aviation Corporation a $320,000 face amount 7 3/4% note of Fairfield Aviation Corporation issued to International Controls Corp. as of September 30, 1970 and $444,160 of outstanding advances, and the actions of the officers of International Controls Corp. in effecting such contributions to the capital of Fairfield Aviation Corporation are hereby ratified and approved in all respects.

RESOLVED, that the corporation agrees to lease or purchase general air taxi service from Skyways Leasing Corporation with a minimum annual payment of $78,000 for such services and for Skyways' agreement to make aircraft available to the corporation upon request through April 30, 1973, such payments to be at estimated rates prevailing in the industry for the particular service provided; and the actions of the officers of International Controls Corp. in effecting such agreements are hereby ratified and approved in all respects.

RESOLVED, that the corporation lease a jet aircraft from Skyways Leasing Corporation for a period of five years at a monthly rental of $100,000 for the months of October, November and December, 1971; $83,000 per month during 1972; and $47,000 per month thereafter through September, 1976; and that the corporation agree to be responsible for the costs (except insurance) and supervision of all aspects of the operations of such aircraft, including service, maintenance, overhaul, scheduling and personnel; and the actions of the officers of International Controls Corp. in effecting such lease agreement are hereby ratified and approved in all respects.

RESOLVED, that the corporation enter into an agreement with Fairfield General Corporation pursuant to which Fairfield General Corporation will, for the period commencing February 24, 1972 and ending on April 30, 1973 reimburse the corporation for the services rendered to Fairfield General Corporation by officers of International Controls Corp. at an annual rate equal to 2% of the first $1,000,000 gross receipts earned by Fairfield General Corporation in any year plus 1% of all gross receipts earned in any calendar year in excess of such $1,000,000, such reimbursement in no event to be less than an aggregate of $20,000 per year nor more than an aggregate of $50,000 per year; and the appropriate officers of International Controls Corp. are hereby authorized, empowered and directed to execute and effect such agreement and to do any and all things necessary or advisable in order to carry out the provisions of said agreement.

There being no further business to come before the meeting, it was upon motion duly made, seconded and unanimously carried, adjourned.

Shirley E. Bailey

Shirley E. Bailey

Affidavit 250a

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EXHIBIT F

Affidavit 251a

BUSINESS IN WHICH INTERNATIONAL CONTROLS CORP. IS ENGAGED

International Controls Corp. produces the following products:

Actuators

Electrical motors

Relays

Gyros

Microwave equipment

Steam traps

Profile milling

X-Ray shielding

Bomb and missile casings

Commercial trailers

Precise forgings

Dies

Steel transmission towers

Aircraft arresting gear

Government publications

Waste disposal systems

Aircraft components

EXHIBIT 252a

Affidavit

BUSINESSES IN WHICH INTERNATIONAL CONTROLS CORP. IS ENGAGED

Unit	Location	Product
Datron Systems, Inc.		
EEMCO Division	Los Angeles	Actuators/Electrical Motors
Electronic Specialty	Portland, Ore.	Relays/Gyros
Tech Systems Corp.	Connecticut	Microwave/Motors
Nicholson Division	Pennsylvania	Steam traps
Radiation International, Inc.		
Portland Heavy Industries	Oregon	Profile milling (Aerospace/aircraft)
Ameray Corp.	New Jersey	X-Ray shielding
All American Industries		
IMCO	Texas	Bomb and missile casings
Swan	Texas	Commercial trailers
Bergman	Texas	Precise forgings (Aerospace)
AFD	Los Angeles	Dies
Anchor	4 Locations	Steel transmission towers
AAE	Delaware	Aircraft arresting gear
Befab	Ireland	Aircraft arresting gear
AAI - International	London	Sales office
Forge Aerospace/Forge Ltd.	Washington, D.C.	Government publications
AENCO	Delaware	Waste disposal systems

EXHIBIT

INTERNATIONAL CONTROLS CORP.

Resolutions of Board of Directors

Pursuant to Section 608.09(4) of the Florida General Corporation Law and Section 5 of Article II of the Bylaws of the Company, the undersigned, being all of the members of the Board of Directors of the Company, hereby consent to the adoption of the following resolutions as of November 13, 1970:

RESOLVED, that the proper officers of the Company be and they hereby are authorized to make a pro rata distribution to the stockholders of the Company of all of the common stock of Fairfield Aviation Corporation on the basis of one share of common stock of Fairfield for each 10 shares of the Company's common stock;

RESOLVED, that such distribution shall be made to all holders of the Company's common stock who are holders of record on the Company's stock transfer books at the close of business on December 4, 1970;

RESOLVED, that the certificates representing full shares of Fairfield common stock shall be delivered to the holders of ICC common stock entitled thereto on December 11, 1970 or as soon thereafter as practicable;

RESOLVED, that the proper officers of the Company are hereby authorized, empowered and directed to do and perform all such further acts and things, to give all such notices, and to enter

into and execute for and on behalf of the Company all such further agreements and documents as such officers may deem necessary or proper to carry out the purpose and intent of the foregoing resolutions.

This consent may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Stanley Miller, Jr.

Robert L. Vesco

Frank C. Beatty

Elmer A. Sticco

Malcolm E. McAlpin

Wilbert J. Snipes

Merle Thorpe, Jr.

Affidavit 256a

Affidavit 257a EXHIBIT H

MARINE MIDLAND BANK
NEW YORK

P. O. BOX 3210 CHURCH STREET STATION • NEW YORK, N. Y. 10008

(212) 344-5110

y 9, 1973

. C. Leonard Gordon
o Shea Gould Climenko & Kramer
0 Madison Avenue
w York, New York 10017

ar Mr. Gordon:

th respect to Shea, Gould, Climenko and Kramer represented by your-
elf, in acting in the capacity of General Counsel for International
ontrols Corporation and Mr. David M. Butowsky as Special Counsel for
aid Corporation, we are pleased to comply with your request of April
4, 1973 by supplying the following information.

arine Midland Bank - New York in compliance with previous directives
f either duly appointed officers and/or appointed counsel of Inter-
ational Controls Corporation has maintained and will continue to main-
ain "Stop Transfer Orders" on the following accounts:

Account	Share Balance
Vesco & Co. 200 Fairfield Road Fairfield, New Jersey	846,380
Robert L. Vesco 200 Fairfield Road Fairfield, New Jersey	117,963
Robert L. Vesco 200 Fairfield Road Fairfield, New Jersey	4,500
	968,843

With regards to your second reference this will confirm that Marine
Midland Bank - New York while acting as Transfer Agent for Inter-
national Controls Corporation processed, issued and mailed from its
office a Common Stock Spin-Off in the form of Fairfield General Cor-
poration Common Stock at a rate of one Fairfield General Corporation
share for each ten shares of International Controls Corporation for
all shareholders of record February 17, 1972.

A total of 7,023 certificates were issued representing 377,750 shares of Fairfield General and the balance of 2,081 constituted the shares covered by a cash settlement made to holders of fractional shares. This cash settlement was made on a basis of $2.64 a share and totalled $5,494.45.

Attached please find photocopies of all pertinent directives surrounding this matter which were supplied by International Controls Corporation.

If any further information be necessary, please contact me.

Very truly yours,

Thomas J. Babinski
Account Officer

/muh
Encl.

Exhibit 1

Affidavit

EXHIBIT I

Skyways Leasing Corporation
Passaic Avenue, East Hanover, New Jersey 07936 (201) 227-1300

HAND-DELIVERED

March 9, 1973

Mr. Elmer A. Sticco, President
International Controls Corp.
200 Fairfield Road
Fairfield, New Jersey 07006

REFERENCE: Boeing 707, N11RV

Dear Mr. Sticco:

Your attention is called to the failure of ICC to pay the monthly installments of rent due for the months of February and March, 1973, each in the amount of $47,000, under the Lease between us dated October 1, 1971 with respect to the above aircraft.

Demand is hereby made for immediate payment of such rental, together with interest thereon from the due date until payment.

In addition, you are also reminded of ICC's failure to pay to Qualitron Aero, Inc. the sum of $72,562 for maintenance and repairs to the above aircraft made at your direction and for which Qualitron Aero, Inc. has invoiced ICC. Qualitron Aero, Inc. has advised us that they are asserting A Possessory Lien against the aircraft in this amount, which as you know, is in violation of the terms of our Lease.

Finally, your attention is called to the necessity of paying into the Aircraft Use Escrow Account the sum of $583.00 by reason of the use of the aircraft for two hours and fifty-five minutes in January and February, 1973.

As other charges and rental payments have been paid by ICC under the Lease, we trust that the failure to make the above payments is an oversight and that payments will be made promptly.

Sincerely,

SKYWAYS LEASING CORPORATION

Joel M. Grady
President

cc: Shanley & Fisher
570 Broad Street
Newark, New Jersey
Attn: J. William Barba, Esq.

Mr. Frank G. Beatty

Exhibit J

Affidavit 262a

EXHIBIT

Skyways Leasing Corporation
1 Passaic Avenue, Fairfield, New Jersey 07006 (201) 227-1305

HAND-DELIVERED

March 9, 1973

Mr. Elmer A. Sticco, President
International Controls Corp.
200 Fairfield Road
Fairfield, New Jersey 07006

REFERENCE: Boeing 707, N11RV

Dear Mr. Sticco:

As you know, we are advised by Qualitron Aero, Inc that despite repeated demands, ICC has failed to pay bills rendered by Qualitron to ICC in the amount of $164,441 for alterations and improvements made to the above aircraft at ICC's direction and that until such bills are paid, Qualit Aero, Inc. will not release possession of the aircraft or permit it to be test flown. In addition to the above bill we are also advised of ICC's failure to pay bills submitte by Qualitron for repairs and maintenance on the above airc in the amount of $72,562. The failure of ICC to pay these bills and Qualitron's assertion of a lien, as you know, no only violates the Lease Agreement between us with respect the above aircraft dated October 1, 1971, but also jeopar the value of the aircraft and the terms of the Chattel Mo held by Pan American World Airways, Inc. on the aircraft. Needless to say, we must again insist that payment of the above bills be made forthwith.

In line with your request efforts are being made us to sell or lease the aircraft so that if the aircraft sold or leased, you may be relieved of any further obligat under the Lease. We currently have a number of prospects which you have been advised; but unfortunately, it is im to promote the sale of the aircraft while it remains in possession of Qualitron Aero, Inc. under circumstances wh not permit test flights and demonstration and acceptance

As we fear that the most viable of the two pros which we have will be lost unless the plane is availabl New York City or Washington, D. C. area sometime durin coming week for a demonstration flight with him, Skyway Corporation shall pay the above sums to Qualitron Aero,

Affidavit

Mr. Elmer A. Sticco, President
International Controls Corp.

March 9, 1973
Page 2

for your account and, of course, hold ICC liable for said sums together with interest thereon. In the event Skyways Leasing Corporation makes such payments to Qualitron Aero, Inc. it will be doing so, of course, in order to minimize any damages that it may ultimately sustain by reason of ICC's failure to pay the above bills and to otherwise comply with the requirements of the Lease.

We trust that ICC will make the above payments forthwith so that it will not be necessary for Skyways Leasing Corporation to do so.

In the event that ICC does not pay Qualitron Aero, Inc. the amount owing on the above bills on or before the same are paid by Skyways Leasing Corporation, request is hereby made for ICC to have the aircraft delivered to Newark, New Jersey or other designated points at such time as Qualitron acknowledges same and releases same so that the aircraft is available for examination by prospective purchasers.

So that we may plan accordingly, we would appreciate hearing from you by return mail.

Sincerely,

SKYWAYS LEASING CORPORATION

Joel M. Grady
President

cc: Shanley & Fisher
570 Broad Street
Newark, New Jersey
Attn: William Barba, Esq.

Mr. Frank G. Beatty

Exhibit K

EXHIBIT K

INTERNATIONAL CONTROLS CORP.
209 Fairfield Road
Fairfield, New Jersey 07006
Telephone: (201) 227-4600
TWX: 710-734-4340

March 21, 1973

Skyways Leasing Corporation
167 Fairfield Road
Fairfield, New Jersey 07006

Attention: Mr. Joel Grady

Dear Sirs:

I have been advised that you have taken possession of the Boeing 707 N11RV and flown it to Beirut, Lebanon. This was done without the knowledge or consent of International Controls Corp., and, indeed, happened while we were negotiating with you on this very matter. As you know, your action is in violation of the terms of our lease.

Reference is made to your letters of March 9, 1973. As you know, International Controls Corp. has been under a court order which has forced a delay in the matters referred to in those letters. We have now entered into a Consent Judgment with the Securities and Exchange Commission providing for the appointment by the court of a new Board of Directors and special counsel. We expect these to be appointed in the next day or two, at which time we will be able to determine whether the payments referred to in your March 9, 1973 letters are in fact due, and we can take care of them promptly.

Reference is also made to your letter of March 12, 1973. We do not accept that there has been any default. Particularly in view of the interrelationship to you, we do not believe you have any basis whatsoever to claim a default.

Very truly yours,

INTERNATIONAL CONTROLS CORP.

Elmer A. Stiers
President

Exhibit

Attached

AN AGREEMENT BETWEEN
INTERNATIONAL CONTROLS CORP.
AND
ALWYN L. EISENHAUER

AGREEMENT is entered into between Alwyn L. Eisenhauer, ("Eisen-
uer") and International Controls Corp. ("ICC") dated March 7, 1973.

WHEREAS Eisenhauer has previously been employed by ICC as its
irector of Aviation and Captain of a leased Boeing 707 Aircraft (the "Air-
raft") for approximately sixteen (16) months; and

WHEREAS ICC is desirous of obtaining the services of Eisenhauer and
ertain other flight crew personnel of the Aircraft for certain flights to be
ade at the direction of ICC and Eisenhauer desires to provide his services
nd those of the required flight crew personnel.

1. Eisenhauer agrees to fly the Aircraft at ICC's request and to provide
he requisite FAA qualified flight crew personnel for all flights of the Aircraft
which ICC deems necessary while the Aircraft is leased and under the control
of ICC. ICC agrees that it will use its best efforts to schedule such flights at
imes mutually convenient to Eisenhauer, taking into account actual prior com-
mitments Eisenhauer may have.

2. ICC will compensate Eisenhauer and the flight personnel on the fol-
lowing per diem scale for each day during which the Aircraft is flown and/or
assigned, plus reasonable documented out-of-pocket expenses:

Eisenhauer	$250.00
First Officer	$100.00
Flight Engineer	$100.00
Flight Attendant(s)	$100.00

Such payments will be made no later than three (3) business days following each flight.

3. Eisenhauer further agrees to the following:

(a) Within ten (10) days from the date of this Agreement, Eisenhauer will provide ICC a schedule listing of ICC-owned inventory items on the Aircraft and provide for the return to ICC of the inventory listed on such schedule.

(b) Eisenhauer agrees to use his best efforts to return, at ICC's expense, all inventory items on loan from Pan American World Airways, Inc., pursuant to the terms of the Agreement between Pan American and Ralph P. Dodd dated September 15, 1971.

(c) Upon termination of this Agreement Eisenhauer will return to ICC the credit cards listed in a letter dated March 7, 1973, a copy of which is attached hereto.

4. ICC further agrees to the following:

(a) To pay to Eisenhauer and the flight crew personnel severance pay in amounts heretofore agreed upon by the ICC Board of Directors, less (i) all advances from ICC which have not been accounted for, and (ii) $5,000.00 from the severance pay of Eisenhauer pending resolution of an accounting from Eisenhauer for all expenses incurred by him through the date of termination of full time employment with ICC.

(b) ICC will make reasonable cash advances to Eisenhauer for each flight requested, and such advances shall be accounted for and settled within three (3) days of the termination of each requested flight.

(c) ICC, at its expense, will provide travel accident for accidental death and dismemberment insurance coverage on Eisenhauer and the flight crew personnel which was in force on February 15, 1973.

5. This Agreement contains the entire Agreement between the parties and may not be changed or terminated orally.

6. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

7. This Agreement and Eisenhauer's rights hereunder may not be assigned by Eisenhauer. This Agreement shall enure to the benefit of and be binding upon ICC, its successors and assigns.

8. Either party shall have the right to terminate this Agreement upon ten (10) days written notice of intent to do so, four (4) months after date of signing this Agreement.

In witness whereof, Eisenhauer and ICC have duly executed this Agreement on the day and year first above written.

INTERNATIONAL CONTROLS CO[illegible]

By: _____
Elmer A. Stiegl[illegible], President

_____
Alwyn L. Eisenhauer

Telephone: (2.1) 227-4600
TWX: 710-734-4340

March 7, 1973

International Controls Corp.
200 Fairfield Road
Fairfield, New Jersey 07006

Att: Mr. Frank G. Beatty

Dear Frank:

The following list of credit cards are assigned to the Boeing 707:

Gulf Oil Credit Card	- # 44683-41682-0474	Expiration date 4/74
Humble Oil	- # 327-974-427-4-008	Expiration date 6/74
Humble Oil International	- Carnet # NR 317-898-768-5D	Expiration date 12/31/73
Shell International	- # CCNO 128 36 Two cards.	Expiration date 12/31/72
Texaco	- # 10-862-56 28-4	Account cancelled
Shell	-## 652-809-682	Expiration date 12/73

A. L. Eisenhauer

EXHIBIT 19

Affidavit 272a

ALWYN L. EISENHAUER
32 Lakewood Drive
Denville, New Jersey 07834

May 3, 1973

SEC MIDWEST REGIONAL OFFICE
RECEIVED
MAY 4 - 1973

Jerald Lanzotti, Esq.
Securities and Exchange Commission
26 Federal Plaza
New York City, New York 10006

Dear Mr. Lanzotti:

You have requested that I set forth specific information with respect to the flights on which I was Aircraft Commander commencing with the period March 17, 1973 to date. Set forth below in tabular form is the information requested by you and prepared by me to the best of my recollection.

DATE	AIRCRAFT (By Whom Paid)	POINT OF DEPARTURE AND ARRIVAL
3/17/73	707-Skyways	Ft. Worth - Nassau, Bahamas
3/18/73	707-Skyways	Nassau - Rabat, Mor.
3/19/73	707-Skyways	Rabat-Agadar, Mor. - Marrakech, M Rabat, Mor.
3/20/73	707-Skyways	Rabat, Mor - Tunis, Tun.
3/21/73	707-Skyways	Tunis - Beirut-Leb.-Beirut-Tunis
3/22/73	707-Skyways	Casablanca-Rock Sound, Bah.- Rock Sound-Nassau, Bah.
3/30/73	G-2-Connex	Morristown, N.J.-Nassau, Bah.
4/1/73	G-2-BCB (Leblanc)	Nassau-Wilmington, N.C.-White P Allentown, Pa.-Nassau.
4/2/73	G-2-BCB (Leblanc)	Nassau-Santa Domingo, Dom.R.- Caracas, Venez-Nassau, Bah.
4/3/73	G-2-BCB (Leblanc)	Nassau-Caracas, Venez.

Affidavit 273a.

Jerald Lanzotti, Esq. May 2, 1973
Securities and Exchange Commission

DATE	AIRCRAFT (By Whom Paid)	POINT OF DEPARTURE AND ARRIVAL
4/4/73	G-2-BCB (Leblanc)	Caracas-Nassau-San Jose, Costa Rica
4/6/73	G-2-BCB (Leblanc)	San Jose-Nassau, Bah.
4/7/73	G-2-BCB (Leblanc)	Nassau-Tetersboro, N.J.
4/19/73	G-2-BCB (Leblanc)	Tetersboro, N.J. - Nassau, Bah.
4/22/73	G-2-BCB (Leblanc)	Nassau-Tet.N.J.-Nassau, Bah.
4/23/73	G-2-BCB (Leblanc)	Nassau-Tet. N.J.
	Crew deadheaded to Nassau on Connex's Sabreliner	
4/24/73	707-Skyways	Nassau-test flight - Nassau Nassau-Assuncion, Paraguay
4/25/73	707-Skyways	Assuncion-Buenos Aires.
4/27/73	707-Skyways	Buenos Aires-Assuncion, Par.
4/28/73	707-Skyways	Assuncion Para, - Santa Domingo, Dom.
5/2/73	707-Skyways	Santa Domingo-San Jose-C.R. San Jose - Nassau Bahamas

In addition to the above, you have requested that I set forth the names of the passengers aboard the various aircraft referred to above. Since I maintain no records of passengers on board, nor am I always aware of the identity of those persons, I am unable with any degree of certainty to set forth the names of any persons who I may believe to have been aboard the aircraft at any given time.

Very truly yours,

Alwyn L. Eisenhauer

ALE:pg

ALWYN L. EISENHAUER
32 Lakewood Drive
Denville, New Jersey 07834

May 4, 1973

Jerald Lanzotti, Esq.
Securities and Exchange Commission
26 Federal Plaza
New York City, New York 10006

Dear Mr. Lanzotti:

At your request I have agreed to supplement my letter to you of May 3, 1973. Set forth below are the names of the passengers who flew on board the aircraft on the dates indicated. The dates correspond to the dates set forth in my letter of May 3. The names below are not from any record which I maintain but are given to the best of my recollection:

Date	Passengers
3/17/73	Joel M. Grady
3/18/73	Joel M. Grady, Robert L. Vesco, Norman P. LeBlanc, Richard E. Clay, Stanley Graze, Gilbert Str
3/19/73	Vesco, LeBlanc, Graze, Straub
3/20/73	Grady, Vesco, LeBlanc, Clay, Graze, Straub
3/21/73	Grady, Vesco, LeBlanc, Clay, Graze, Straub
3/22/73	Grady, Vesco, LeBlanc, Clay, Gr Straub
3/30/73	Mrs. Vesco
4/1/73	Mrs. Vesco, Charley Fabel, Just Feldman, Paul Grand - Nassau- Wilmington, N.C. Airl Plains, N.Y.

Date	Passengers
4/1/73	No passengers - White Plains, N.Y. to Allentown, Pa.
4/1/73	Nick Eisenhauer - Allentown, Pa. to Nassau
4/2/73	Left Nassau, no passengers, picked up 2 unknown passengers at Santa Domingo, Dom. R. and 4 unknown passengers at Caracas, Venez.
4/3/73	4 unknown passengers
4/4/73	Caracas-Nassau, empty; San Jose, C.R. - Mr. & Mrs. Vesco and daughter, [illegible]
4/6/73	Mr. & Mrs. Vesco and daughter back to Nassau, Bah., [illegible]
4/7/73	Vesco children and friends, [illegible]
4/19/73	Vesco children and Mres. Vesco and parents of Mr. Vesco
4/22/73	Vesco children and guests - Empty return to Nassau
4/23/73	Mrs. Vesco & Children - left in Teterboro
4/24/73	Vesco, Jose Marti Figures, Ulrich Strickler plus 2 unknown
4/25/73	Vesco, Figures, Strickler and 2
4/27/73	Vesco, Figures, Strickler and 2
4/28/73	Vesco, Figures, Strickler and 2 One of plus 2 got off in Santo Domingo, to San Jose

Affidavit 276a

Date

5/2/73

Passengers

Vesco, Mr. & Mrs. Gilbert Straub,
Strickler

On April 24, 1973 I was advised by Mr. Joel Grady, President of Skyways Leasing Corp., that I was to act as commander of the B-707 and that I would receive more specific instructions from Mr. Norman LeBlanc. On that same day, Mr. LeBlanc advised me that a flight was to originate in Nassau and would include stops at Buenos Aires, Argentina and San Jose Costa Rica.

Yours truly,

Alwyn L. Eisenhauer

Exhibit N

EXHIBIT P

HOGAN & HARTSON

815 CONNECTICUT AVENUE
WASHINGTON, D. C. 20006

TELEPHONE (202) 296-5500
CABLE ADDRESS "HOGANDER WASHINGTON"
TELEX 89-2257

COUNSEL
CHARLES E. SHEPLE

November 25, 1970

Mr. Ralph C. Hocker
Associate Director
Division of Corporation Finance
Securities and Exchange Commission
500 North Capitol Street
Washington, D. C. 20549

Dear Mr. Hocker:

We appreciated the opportunity to meet with you and other members of the SEC staff yesterday concerning the relationships between International Controls Corp. ("ICC") and IOS, Ltd. ("IOS") and the proposed spinoff of Fairfield Aviation Corporation ("Fairfield"). With respect to the Fairfield spinoff, ICC, after carefully considering the views expressed at the meeting by members of the staff, has asked us to convey to you the following information and proposal:

1. A principal business purpose of the proposed spinoff is to dispose of a business (the operation of a general aviation airport) which is unrelated to the manufacturing operations of ICC and its subsidiaries. Certain other airport operations have previously been disposed of by ICC. It is expected that after the proposed spinoff, Fairfield would not only continue in the airport business but would seek to expand such business through acquisitions.

2. After the proposed spinoff, ICC would offer to Fairfield an option to acquire all of the shares of ICC Investments Limited ("IIL"), a Bahamian subsidiary of ICC which has entered into a financing arrangement with IOS described in the ICC registration statements presently on file with the SEC. The terms and purchase price of such option have not yet been determined but would be the

subject of negotiations between Fairfield and ICC after the spinoff. ICC regards this proposed transaction as a means not only of disposing of another unrelated business activity but also of disengaging itself from relationships with ICS which, as suggested in our meeting, might give rise to objections by the SEC.

3. For tax and other reasons, ICC believes that (a) it would be inadvisable to negotiate with Fairfield the terms of sale of an option to purchase the ILL stock prior to the spinoff, and (b) the spinoff should occur in the calendar year 1970.

4. The proposed spinoff of Fairfield by ICC is not intended as a means of creating active trading in Fairfield stock at artificially inflated prices. ICC has been mindful of this risk and prior to our meeting ICC and Fairfield had taken or planned to take several steps to minimize or eliminate it, such as (a) declaring a dividend of one share of Fairfield stock for every ten shares (rather than one share) of ICC stock, (b) refraining from arranging for a market maker for the Fairfield stock, although normally expected to do so by the American Stock Exchange, (c) arranging for fractional shares to be paid in cash, rather than in scrip or by other arrangements that would necessitate purchases and sales of fractional interests, (d) disseminating financial and other information relating to Fairfield, through press releases and direct mailings to the ICC stockholders, and (e) promptly filing a registration statement under Section 12(g) of the Securities Exchange Act of 1934.

5. In addition, as a result of the concerns expressed by staff members at our meeting, ICC has asked us to submit for your consideration the following proposal, which is designed to conform to the disclosure philosophy expressed in the SEC's proposed Rule 15c7-11 under the Securities Exchange Act of 1934 (Release No. 8909, June 24, 1970). The transferability of the Fairfield shares to be distributed by ICC would be restricted by causing each Fairfield stock certificate to bear a legend, as permitted by the corporate laws of New Jersey (the state of incorporation of Fairfield), prohibiting transfer of the certificates evidencing the Fairfield shares unless and until either (a) a registration statement with respect to common stock of Fairfield under the Securities Act of 1933 has become effective, or (b) a registration statement with respect to the common stock of Fairfield filed pursuant to Section 12(g) of the Securities Exchange Act of 1934 has become effective. Copies of the information contained in such registration statement, upon effectiveness, would be

mailed to all Fairfield stockholders. In addition, a press release outlining the foregoing arrangement would be made well in advance of the distribution date to discourage any trading in advance of receipt of the certificates for the Fairfield shares.

We believe the foregoing proposal, as well as the steps already taken by ICC, demonstrates a conscientious and good faith effort and desire on the part of ICC not only to meet possible objections by the staff to the Fairfield spinoff, but also to avoid the hazards which the federal securities laws were designed to prevent.

We have also been asked to advise you that ICC is prepared to delay the proposed distribution of the Fairfield shares (now scheduled for December 11, 1970) for such reasonable period of time as may be required to discuss the foregoing proposal with you and other members of the staff, and we would suggest a meeting with you for that purpose at your earliest convenience.

Yours very truly,

Robert M. Jeffers

Robert M. Jeffers

RMJ:slw

cc: Mr. Solomon Freedman
Mr. Stanley Sporkin
Mr. Allan S. Mostoff
Mr. Robert M. LaPrade
Mr. Lloyd M. Dollet
Mr. Richard M. Goldberg

Affidavit 281a

Exhibit O

EXHIBIT 2

EXTRACT FROM JUNE 2, 1972 BOARD MEETING

The Chairman announced that the purpose of the meeting was to consider a proposed agreement whereby the Corporation would sell its stock interests in International Bancorp Limited ("IBL") and Value Capital Limited ("VCL") and certain promissory notes of VCL, Kilmorey Investments Limited ("Kilmorey"), Hemisphere Financial Services Ltd. ("Hemispheres"), and ICC Investments Limited ("IIL"). The Chairman reported that an earlier proposal to sell such assets to Fairfield General Corporation had been abandoned, and that under the current proposal the assets would be sold to Global Financial Limited ("Global Financial"), a Bahamian company. The Chairman reported that Mr. G. Bradford Cook, General Counsel of the Securities and Exchange Commission, had been informed of the earlier proposal and of the pending proposal.

The Chairman distributed to each member of the Board a copy of the proposed agreement and summarized for the Board the provisions of the proposed agreement. The particular assets to be sold are (i) 1,760,767 shares of IBL, (ii) 2,360,767 shares of VCL, (iii) a $935,190 promissory note of VCL, (iv) a $300,000 promissory note of Kilmorey, (v) a $412,048 promissory note of Hemispheres, and (vi) a $225,267 promissory note of IIL.

It was noted in particular that Global Financial is a wholly-owned subsidiary of Global Holdings Limited ("Global Holdings"), also a Bahamian company, all of the stock of which is owned by Norman P. LeBlanc. The Chairman reported that he was advised that Mr. LeBlanc had, on June 1, 1972, tendered to I.O.S., Ltd. ("IOS") his resignation as an officer and director of that company, and that Mr. LeBlanc is arranging to sell his stock interest in Kilmorey.

It was noted that, under the proposed agreement, the foregoing assets would be sold for five unsecured promissory notes of Global Financial (guaranteed by Global Holdings) aggregating $7,350,000, with due dates varying from one to five years; that Global Financial would assume the tax indemnification obligation of IIL to the Corporation; and that the proposed transaction, considered in conjunction with the earlier sale of IOS stock holdings to Kilmorey, would, according to the auditors, result in a deferred gain to the Corporation of $1.7 million in addition to the $3.6 million gain recognized in 1970 and 1971. All the notes would become immediately due and payable in the event that 50 percent or more of the outstanding shares of any class of stock of Global Holdings should cease to be owned by Mr. LeBlanc;

The proposed agreement also provided that the services of those of its employees and directors presently serving as officers or directors of IBL, VCL, or their subsidiaries, would be available to Global Financial for a reasonable length of time, but the Corporation's obligation to do so would not extend beyond December 31, 1972. Counsel also explained the provisions providing for reimbursement to the Corporation by Global Financial of the salaries and expenses of the Corporation's personnel performing the foregoing services, as well as the related indemnification provisions.

The Chairman and other directors noted that one of the major reasons for the sale of these assets was the attitude of the Securities and Exchange Commission with respect to these assets being held by the Corporation or affiliates such as Fairfield General Corporation. Also explained was the fact that the Securities and Exchange Commission's investigation had and would prevent the Corporation from developing these holdings and even the other business of the Corporation to their fullest extent so long as the Corporation or its affiliates retained any interest in properties derived from its IOS involvements.

Exhibit P

Affidavit 286a

11/1 31

TOTAL OF INVOICES
LESS % DISCOUNT
LESS
TOTAL DEDUCTIONS
AMOUNT OF CHECK 25000

INTERNATIONAL CONTROLS CORP.
FAIRFIELD, N. J. 07006

7561

Nov 1, 1968

PAY TO THE ORDER OF [illegible] $ 25,000

[illegible] DOLLARS

TRUST COMPANY
NATIONAL BANK
DENVILLE, N. J.

⑆021200238⑆ 024 000 637 5⑈ ⑈0007500000

Affidavit 288a

TRUST COMPANY No.
NATIONAL BANK
MORRISTOWN, N. J.

DATE 11/1/83

PAY TO THE ORDER OF

DOLLARS

NON NEGOTIABLE

TREASURER'S CHECK

AUTHORIZED SIGNATURE

⑆021200238⑆ 450 504 000 7⑈

CUSTOMER COPY

SAVINGS

PROCEEDS OF LOAN

OTHER

TRUST COMPANY No. 0000177
NATIONAL BANK
MORRISTOWN, N. J.

55-212

DATE 11/1/83

PAY TO THE ORDER OF Union - Agnew Finance Committee

DOLLARS

NON NEGOTIABLE

TREASURER'S CHECK

AUTHORIZED SIGNATURE

⑆021200238⑆ 450 504 000 7⑈

CUSTOMER COPY

SAVINGS

PROCEEDS OF LOAN

OTHER

TRUST COMPANY No. 0000178
NATIONAL BANK
MORRISTOWN, N. J.

55-212

DATE 11/1/83

PAY TO THE ORDER OF Union - Agnew Finance Committee

DOLLARS

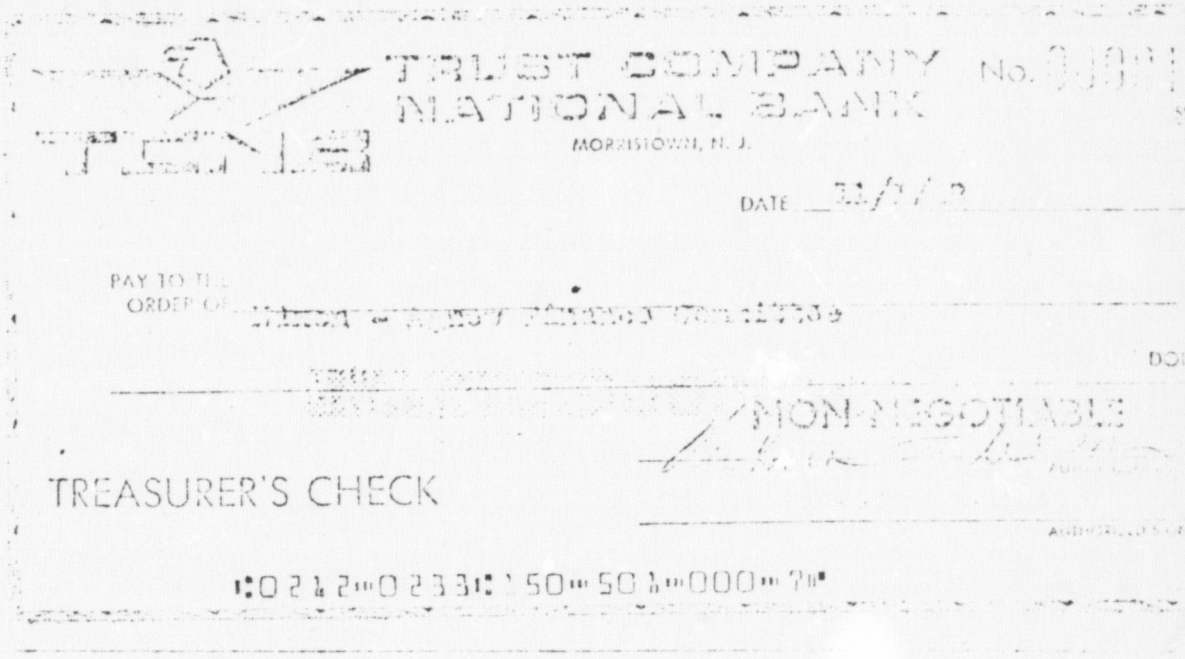
NON NEGOTIABLE

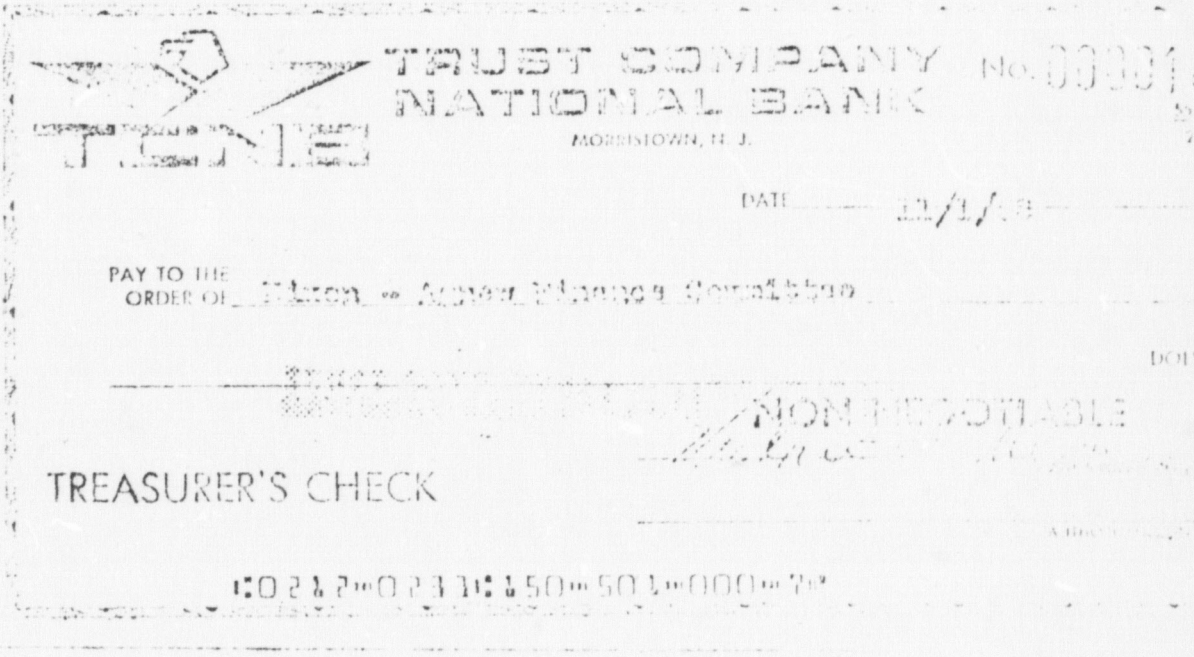
TREASURER'S CHECK

AUTHORIZED SIGNATURE

⑆021200238⑆ 450 504 000 7⑈

CUSTOMER COPY


TRUST COMPANY
NATIONAL BANK
MORRISTOWN, N. J.
No. 00811
DATE 11/1/13
PAY TO THE ORDER OF
NON-NEGOTIABLE
TREASURER'S CHECK
⑆021200238⑆ 150 501 000 78


TRUST COMPANY
NATIONAL BANK
MORRISTOWN, N. J.
No. 00811
DATE 11/1/13
PAY TO THE ORDER OF
NON-NEGOTIABLE
TREASURER'S CHECK
⑆021200238⑆ 150 501 000 78

7559

Oct. 31 19 68

TO Co-Operative Ind. Inc.

FOR C.O.D. # 0-68-137

BAL. BROUGHT FORWARD	465 557	44
TOTAL		
AMOUNT THIS CHECK	176	73
BALANCE	465 381	71

7560

October 31 19 68

TO Dons Lock Service

FOR Mfg. Repairs

TOTAL		
AMOUNT THIS CHECK	18	54
BALANCE	465 362	17

7561

Nov 1, 19 68

TO ACME

FOR

TOTAL		
AMOUNT THIS CHECK	[illegible]	
BALANCE	440 363	17

Cash Disbursements Journal November 1968

Date 1968			T.C.B. Cash	ap amt.		Gross Payroll	Fica	Federal	Sue
1	Trust Co. National Bank	7561	25000 —						
	Pantwater West Caldwell	7562	25 80						
	Void, Void,	7563	—						
	ICC. Refgr. Inc.	7564	20 00 00						
4	Cash Petty Cash	7565	400 00						
	Void, Void	7566	—						
	Richard E. Clay	7567	200 00						
	Void, Void	7568	—						
	Guarranie Lodge	7569	174 87						
	Cesar Fuchinde	7570	100 00						
4	Cay - Buick - Cadillac	7571	161 34						
	C. Personnel Growth Fund	7572	36 00						
	Void, Void, Void	7573	—						
	Hagan & Wartson	7574	130576 97						
	Commerals Club	7575	25 00						
	Commerals Club	7576	25 00						
4	Richard E. Clay	7577	41 86						
5	N.J. Pension Employment	7578	553						
	Trust Co. National Bank	7579	3989 85						
	Cash Petty	7580	17 41	17 41					
	A P W. Repeal Corp	7581	26 40	26 40					
	Bauer Factory Supply	7582	77 51	77 51					
	Belmont Smelting	7583	42 85	42 85					
	Brazone Specialties	7584	15 00	15 00					
5	Thos. D. Brewster	7585	121 16	121 16					
	Charles Bruning	7586	42 13	42 13					
	Burns Factory	7587	19 15	19 15					
	William D. Gerard	7588	581 31						
	Carmen Industries	7589	37 42	37 42					
	Ronald Carlucci	7590	21 00	21 00					
	Colonial Spring Co.	7591	94 45	94 45					
	Crane & Belton Co.	7592	35 02	35 02					
	Boston Regors	7593	190 11	190 11					
	Repeal Mansion	7594	14 13						
	Bell Corning Corp.	7595	13 84	13 84					

Affidavit

291a

Store Expense	Petty Cash	Laundry	C Mats	Food Gas	Carpet & C	Ice Cream	Sales Tax	Dues & Subs	Gen Utilities	Auto Exp	Misc	Amt
											Misc	
	1.00.00	26.00.00	25.00									
							20.00					
					1987.0		100.00					
								30.00			Tax Title	121
											Sup Legal	13631
								25.00				
							41.86	25.00			Misc dam.	
											Stapler	5
											Fan	32
											Vase	20
											Surgical Hose	221
		26.00.00	1413		1987		34.86					

Affidavit 293a

November 1, 1968

Republican National Finance Committee
400 Park Avenue
6th Floor
New York, New York 10022

ATTENTION: Mr. Jack Gleason

Gentlemen:

On November 1, 1968 we sent you contribution in the amount of $25,000.00 for the Nixon-Agnew campaign.

Please allocate these funds to the following committees and in the following amounts:

Nixon-Agnew Finance Committee	$5000.00
Nixon-Agnew Election Committee	5000.00
Republican National Finance Committee	5000.00
Republican Campaign Committee	5000.00
Republican Victory Committee	5000.00

Very truly yours,

INTERNATIONAL CONTROLS CORP.

By: _____
Robert L. Vesco, President

RLV:seb

Affidavit

295a

THE WALL STREET JOURNAL
Wednesday, June 6, 1973

IOS Investigators To Meet in Luxembourg On Policy June 28-29

Officials of 4 Governmental Units To Attend Talks; Meanwhile, Vesco Luxury Jet May Be Sold

A WALL STREET JOURNAL News Roundup

Representatives of four governmental agencies investigating the tangled affairs of I.O.S. Ltd. will meet June 28 and 29 in Luxembourg, Albert Dondelinger, chairman of the Luxembourg Banking Commission, said.

In Washington, the Securities and Exchange Commission confirmed that Irving Pollack, director of its enforcement division, would attend.

Mr. Dondelinger, who a week ago disclosed plans for the meeting, said the other participants would be Robert Demers, chairman of the Quebec (Canada) Securities Commission, and a yet unnamed official of the Ontario (Canada) Securities Commission.

Common Policy

According to Mr. Dondelinger, the purpose will be to develop a common policy toward the disposition of about $165 million in cash of I.O.S.-managed mutual funds that the agencies have frozen in their three countries. The actions followed the filing last November in New York by the SEC of a civil fraud suit alleging that fugitive financier Robert L. Vesco had directed the looting of $224 million in fund assets. The suit is still pending.

Mr. Vesco, who denied any wrongdoing in the matter, has failed to reply to separate federal criminal charges that he tried to obstruct the SEC investigation through $250,000 in contributions, later returned, to President Nixon's 1972 reelection campaign.

Mr. Dondelinger said that ideally the funds should be reorganized under new management and their cash assets made available for shareholders who wish to redeem their shares. If the current I.O.S. management refused to cooperate or if there were a flood of redemption demands, he said, the only solution would be liquidation.

Separate Development

In a separate development, the lavishly furnished Boeing 707 aircraft in which Mr. Vesco has roamed the world reportedly is about to be sold. However, neither the purchaser's identity nor the proposed price were disclosed.

Fairfield General Corp., in which Mr. Vesco has been the principal stockholder, announced the sale agreement in Fairfield, N.J., but said it may be canceled if the price isn't paid by June 17. It said the transaction would enable the company to "realize a gain" on its main asset.

The big jet, which was fitted with such amenities as a sauna bath and a dance floor at a cost of over $[illegible], has been the subject of a dispute between Mr. Vesco, I.O.S. and its officials, and International Controls Corp., of Fairfield. International Controls, which Mr. Vesco formerly headed, has claimed [illegible] the plane. It is [illegible] by I.O.S. Bahamas were impounded by the board of the [illegible] company.

Yesterday, Fairfield General said it has sued International Controls in a New Jersey court for allegedly unpaid lease and maintenance fees. Spokesmen for the parties couldn't be reached for amplification.

Since leaving the country for the Bahama Islands and Costa Rica, Mr. Vesco has kept the 707 outside the U.S. most of the time. Documents introduced by the SEC in federal court in New York show that in March, April, and May, Mr. Vesco, his family, or his associates used the plane to visit Morocco, Tunisia, Lebanon, the Dominican Republic, Venezuela, Paraguay, and Argentina.

Notice of Motion to Dismiss of Defendant Vesco & Co., Inc. dated June 15, 1973, with annexed affidavit of Milton H. Stern, sworn to June 12, 1973.

(296a - 302a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al,

Defendants.

Index No.
73 Civ. 2518 (CES)

NOTICE OF MOTION TO DISMISS COMPLAINT FOR LACK OF JURISDICTION, ETC.

TO: SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for Plaintiff
330 Madison Avenue
New York, New York 10017

S I R S :

PLEASE TAKE NOTICE that on Monday, June 18, 1973 at 2:00 P.M., or as soon thereafter as counsel may be heard, we will appear specially before the Hon. Charles Stewart, United States District Court, at Room 2602, United States Courthouse, Foley Square, New York, New York for the sole purpose of seeking the dismissal of the within complaint and all proceedings herein as to the named defendant, Vesco & Co., Inc. (erroneously designated in the complaint as "Vesco & Co."), on the following grounds:

1. Lack of subject matter jurisdiction.

2. Lack of jurisdiction over the person of Vesco & Co., Inc.

3. Insufficiency of process as to Vesco & Co., Inc.

The within motion will be based upon the papers and

pleadings on file in this Court and cause, the affidavit hereto annexed and submitted herewith and the memorandum of law submitted herewith.

The within application is made solely for the purpose of the relief sought hereinabove and is neither intended to be nor should it be deemed to be a general appearance before the court or a submission to the general jurisdiction of this court.

Dated: June 15, 1973

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Vesco & Co., Inc.
(Named in the Complaint as
Vesco & Co.)

By _____
LAURENCE B. ORLOFF
A Member of the Firm

744 Broad Street
Newark, New Jersey 07102
(201) 621-8800

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -against- ROBERT L. VESCO, et al, Defendants.	Index # 73 Civ. 2518 (CES) AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS COMPLAINT FOR LACK OF JURISDICTION, ETC.

STATE OF NEW JERSEY)
.SS:
COUNTY OF ESSEX)

MILTON H. STERN, of full age, being duly sworn, states:

1. I am a member of the firm of Hannoch, Weisman, Stern & Besser, Esqs., Newark, New Jersey. Our firm has served as counsel for Vesco & Company, Inc., a Delaware corporation.

2. Vesco & Company, Inc. was formed on July 12, 1972, to implement an estate planning technique which had been formulated as early as 1968 by my firm along with Lybrand Ross Brothers & Montgomery, Accountants. Following certain tax rulings received April 26, 1972 and July 21, 1972, Mr. Vesco, between July 21, 1972, and year end, exchanged 800,000 shares of ICC Common Stock owned by him for, in part, $2,513,000.00 in par value preferred stock of Vesco & Company, Inc. The par value preferred stock issued to Mr. Vesco was commensurate with the fair market value of the ICC stock exchanged therefor appraised by an investment banker. The purpose and effect of the transfer of Mr. Vesco's stock to Vesco & Company, Inc. was to put an upper limit on the value of Mr. Vesco's ICC holdings for estate tax purposes at the par value

of the preferred stock (i.e. the appraised fair market value ICC stock at the date of the exchange), thus permitting any future appreciation of such stock to inure to the benefit of non-voting common shareholders.

3. Thus, the basic activity of Vesco & Company, I consists of its ownership of the stock in ICC. As of the dat hereof, the record holdings of the stock of Vesco & Company, are as follows: Robert L. Vesco owns 2,513 shares of the $1,000.00 par value preferred stock; the 48 shares of Class A Voting Common Stock are owned by Patricia J. Vesco as Custodi for Daniel Vesco, Anthony D. Vesco, Daun L. Vesco, and Robert Vesco, with one-fourth of said shares being held for each chi Similarly, Patricia J. Vesco as Custodian for each of the above-named children owns 20,000 shares of Class B Non-Voting Common Stock with one-fourth the said amount for each child.

4. It is not now nor has it ever been licensed or authorized to do business in the State of New York; it does not now nor has it ever done business in the State of New York; and it does not have nor has it ever had any office in the State of New York.

5. Upon information and belief, Vesco & Company, I was served in this matter only by service upon the registered agent of the corporation in Delaware. Although plaintiff's

attorneys knew that we were counsel to Vesco & Company, Inc., we received no notice whatsoever of any application for a temporary restraining order.

Milton H. Stern

MILTON H. STERN

Sworn and Subscribed to
before me this 12th day
of June, 1973.

Anna White

ANNA WHITE
NOTARY PUBLIC OF N. J.
My Commission Expires Nov. 18, 1974

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al,

Defendants.

Index No.
73 Civ. 2518 (CES)

NOTICE OF MOTION TO DISMISS COMPLAINT FOR LACK OF JURISDICTION, ETC.

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.
744 Broad Street
Newark, New Jersey 07102
(201) 621-8800

Notice of Motion

Brief in Support of Motion to Dismiss

(303a - 317a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO., et al,

Defendants.

Index No.
73 Civ. 2518 (CES)

Brief in Support of Motion to Dismiss

On the Brief:
Jeffrey M. Garrod

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.
744 Broad Street
Newark, New Jersey 07102
(201) 621-8800

Brief In Support of Motion To Dismiss
[Emphasis Ours Unless Otherwise Noted]

Introductory Statement

On or about June 7, 1973, a complaint was filed by International Controls Corp. (ICC) against Robert L. Vesco and a number of others. The complaint purports to allege violations of the Federal Securities Laws and other common law wrongs, related in the main to two subjects: (a) transactions by those designated as "Vesco and his group" and certain named aiders and abettors regarding assets and funds of I.O.S. and other related companies, and (b) transactions by some of the same persons involving a Boeing 707 jet plane.

Vesco & Co., Inc. (erroneously referred to in the complaint as Vesco & Co.) is named as a defendant in the caption of this action and is "identified" in Paragraph 5(r) of the Complaint in the recital of dramatis personnae. It is not mentioned thereafter, it is specifically excepted by obviously deliberate omission from those charged with violation of the Federal Securities Laws - the specific basis alleged for this Court's jurisdiction - and no other charges are directed to it by name or, as we read the complaint, even by implication.

Upon this document, then (and supporting affidavits, which likewise contain no charges against Vesco & Co., Inc.), the plaintiffs appeared before this Court on an ex parte basis on June 7 or June 8, without any notice to Vesco & Co., Inc. or its attorneys (although their counsel well knew that we were their attorneys) and in flagrant violation of F.R.C.P. 65(b), and secured a temporary restraining order directed to Vesco & Co., Inc. containing arguably broad restraints against "use", "disposition", "encumbrance", or the like, of not only its primary asset - stock of ICC - but "any other assets".

The order to show cause containing these restraints likewise appeared to set a return day of June 13, 1973 at 2:00 P.M. for a hearing as to further injunctive relief directed against, inter alia, Vesco & Co., Inc.*

Vesco & Co., Inc. is a Delaware corporation. It was formed almost a year ago in connection with certain

* The order is either defective or misleading in that it directs only that Fairfield General and Skyways - and no other defendants - show cause on June 13, but seeks injunctive relief against others, including Vesco & Co., Inc. In view of our position, however, with respect to jurisdiction, the issue is presently of importance only insofar as it demonstrates that the Court clearly should not under any circumstances be proceeding at this point on any substantive basis with respect to Vesco & Co., Inc.

estate planning for the Vesco family. It is neither licensed to do business nor does it transact business nor have any offices in New York. We are informed that it was served in Delaware on Monday, June 11, 1973; we as its attorneys first received a set of the plaintiff's papers on that date.

Vesco & Co., Inc. now moves to dismiss the complaint (and hence the order to show cause and restraints) for lack of jurisdiction and insufficiency of process. We appear here today for that purpose and that purpose only; we respectfully protest and contest the authority of this Court to act against Vesco & Co., Inc. on the papers before it.

Statement of Facts

On or about June 7, 1973, plaintiff ICC filed a complaint against Robert L. Vesco and a number of other individuals and corporations. Among the named defendants is the movant, Vesco & Co., Inc. The complaint generally alleges that Robert L. Vesco and defendants LeBlanc, Meissner, Strickler, Greze, Beatty, Clay, Snipes, Weymar, Straub, Buhl, Dodd, Eisenhauer, Phillipe, Bailey, Grady, IOS, Bahamas Commonwealth Bank, International Ban Corp., Value Capital, Kilmorey Investments, Butler's Bank, Bank Cantrade, Fairfield General, Fairfield Aviation and Skyways (defendants Vesco, LeBlanc, Meissner, Strickler, Greze, Beatty, Clay, Dodd, Grady and Bailey are referred to as "Vesco and his group") did by means of Interstate Commerce and the facilities of National Securities Exchanges defraud plaintiff and its stockholders in violation of the Securities Exchange Act of 1934 (15 U.S.C. § 78aa). The purpose of the alleged fraud was to enable defendant "Vesco and his group" to use the assets of ICC and its subsidiaires to obtain for themselves control of IOS. The sole basis for federal jurisdiction rests on this alleged violation

of the Security Laws. (15 U.S.C. § 78aa). Plaintiff does not allege in its complaint or in any of its affidavits that Vesco & Co., Inc. participated in any way in the alleged scheme.

Vesco & Co., Inc. is incorporated in the State of Delaware. Its assets consist almost entirely of stock of ICC. Vesco & Co., Inc. does not conduct any business and does not have any contacts with the State of New York.

The summons and complaint filed in this action were apparently served on Vesco & Co., Inc. at the office of their registered agent in Delaware.

ARGUMENT

I - THE COMPLAINT SHOULD BE DISMISSED AS TO DEFENDANT VESCO & CO., INC. FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR LACK OF PERSONAL JURISDICTION

Plaintiffs assert federal court jurisdiction over the cause of action against Vesco & Co., Inc. based upon § 27 of the Securities Exchange Act of 1934 (15 U.S.C. § 78aa) and the principles of pendent jurisdiction.

A reading of the complaint reveals that plaintiff has alleged in effect that "Vesco and his group" have committed acts in violation of Rule 10b-5 and that they have committed other acts which may fall within the pendent jurisdiction of the federal court. However, nowhere in the complaint is it alleged that Vesco & Co., Inc. committed any act that could even be remotely connected with a violation of the Securities Laws. In fact no allegations whatsoever are asserted against Vesco & Co., Inc. and its name only appears in the caption of the compla and in the description paragraph 5(r). When there are no facts alleged, there can be no jurisdiction.

Paragraph 6 of the complaint sets out the allegations that Rule 10b-5 was violated - this being

necessary to establish federal question jurisdiction. (Paragraphs 8 through 65 of the complaint set out specific acts that comprised the scheme complained of in Paragraph 6). Paragraph 7 lists the defendants who took part in the alleged violation of the Securities Laws complained of in Paragraph 6 and the remainder of the complaint. Specifically excluded from this list is Vesco & Co., Inc. No violation of the Securities Act of 1934 is asserted against it. By this exclusion, ICC has admitted it has no basis for any action against Vesco & Co., Inc. based on the Securities Act of 1934. It cannot be said that the acts of fraud (the basis of a 10b-5 lawsuit) committed by Vesco & Co., Inc. are to be implied from the allegations of the complaint. Federal Rule C.P. 9(b) requires that "all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity."

There being no claim based on federal law asserted against Vesco & Co., Inc., the complaint should be dismissed for lack of jurisdiction.

Neither can ICC assert that any possible but unstated claims against Vesco & Co., Inc. are within the jurisdiction of this court due to its pendent jurisdiction.

It is a well settled policy that "the doctrine of pendent jurisdiction may be invoked only where the claim based upon a substantial federal question is made against the same defendants with respect to whom non-federal claims are asserted." Rosenthal, Inc. v. Aetna Casualty & Surety Company, 259 F. Supp. 624, 630 (S.D.N.Y. 1966). See also, Wojtas v. Village of Niles, 334 F. 2d 797 (7th Cir. 1964), cert. denied, 379 U.S. 964 (1965); New Orleans Public Belt R.R. v. Wallas, 173 F. 2d 145 (5th Cir. 1949); Lawes v. Nutter, 292 F. Supp. 890 (S.D. Texas 1968); Maier v. Newton Creek Towing Company, 190 F. Supp. 933 (S.D.N.Y. 1961). The federal question necessary to invoke pendent jurisdiction must appear in the plaintiff's statement of its claim. Rosenthal, supra. at 628; see cases cited therein. It is clear from reading the complaint that no violation of the Securities Act of 1934 is asserted against Vesco & Co., Inc. As previously discussed, it is specifically excluded by ICC in its complaint from the alleged federal law violation. Absent a qualifying federal question claim against defendant, there is nothing to which other claims may pend. Rosenthal, supra. Weiss v. Sunasco, Inc., 295 F. Supp. 824 (S.D.N.Y. 1969);

see also, Letmate v. Baltimore and Ohio R.R., 311 F. Supp. 1059 (D. Md. 1970); Tucker v. Shaw, 308 F. Supp. 1 (E.D.N.Y. 1970); Mota v. Boyd, Weir and Sewell, Inc., 200 F. Supp. 306 (S.D.N.Y. 1962). It is therefore absolutely clear that a defendant cannot be held subject to the jurisdiction of the court on the theory of pendent jurisdiction unless there is a substantial federal question or cause of action also asserted against it. (It is therefore not necessary to examine the criteria of pendent jurisdiction as set out in United Mine Workers v. Gibbs, 383 U.S. 715 (1966), to see if that doctrine would even be applicable in this case if a substantial federal question had been raised against Vesco & Co., Inc.)

A dismissal of the complaint in this action would be consistent with the Court of Appeals decision in O'Neill v. Maytag, 339 F. 2d 764 (2d Cir. 1964), where the court stated that dismissal of the complaint as to some defendants for failure to state a cause of action was held to defeat federal jurisdiction over plaintiffs' non-federal claims against these defendants. In this case no federal claim is even asserted against Vesco & Co., Inc. Therefore, no federal jurisdiction can possibly exist over any alleged non-federal pendent claims.

II - THE COMPLAINT AGAINST VESCO & CO., INC. SHOULD BE DISMISSED DUE TO INSUFFICIENCY OF PROCESS

The Securities Act of 1934 provides:

> "Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found." 15 U.S.C. § 78aa

The act in effect provides for service of process anywhere in the United States. However, where a claim does not arise under the Securities Act (or any other federal act which specifically provides for special service of process) then Fed.R.C.P. 4(f) is the governing provision for where and how a summons and complaint in a federal action must be served. This rule provides that "all process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held, and, when authorized by a statute of the United States or by these rules, beyond the territorial limits of that state. In this case, Vesco & Co., Inc. was not served within the territorial limits of New York State, it being served in Delaware. There being no applicable federal statute provid

for extra-territorial service, service of process was not properly effected and the court does not have in personam jurisdiction over Vesco & Co., Inc. The complaint should therefore be dismissed as to it.

There is no theory of law that will support the sufficiency of process in this case. If one were even to assume for the purpose of argument only that jurisdiction in this case could be based on diversity of citizenship (which it can't), the process on Vesco & Co., Inc. would still be insufficient even considering any state long arm statute - for the requirements of due process have not been met.

"In order for the corporation to be amenable to service in a state, it must have minimal contacts with the state, sufficient to warrant subjecting it to suit there without affending due process standards." Grammenos v. Lemos, 457 F. 2d 1067, 1072 (2d Cir. 1972). See, McGee v. International Life Insurance, 355 U.S. 220 (1957); International Shoe Co. v. State of Washington, 326 U.S. 310 (1945). More than an incidental contact with the State is necessary, although the party does not have to be authorized to do business in the state or have offices there. In this case,

Vesco & Co., Inc. has absolutely no contact whatsoever with New York State. It transacts no business in New York State and has no agents functioning in New York State. It is incorporated in the State of Delaware with an office in the State of New Jersey. Effective service of process not having been made on Vesco & Co., Inc., the complaint should be dismissed as against it.

CONCLUSION

For the reasons stated herein, defendant Vesco & Co., Inc. respectfully requests that the complaint be dismissed as against it.

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.

By _____
LAURENCE B. ORLOFF
A Member of the Firm

On the Brief:
Jeffrey M. Garrod

Order Extending Temporary Restraining Order dated June 18, 1973 with annexed affidavit of David M. Butowsky, sworn to June 18, 1973.

(318a - 322a)

1109-15

Order 319a
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, : 73 CIV 2518

-against- :

ROBERT L. VESCO, ET AL, : ORDER EXTENDING TEMPORARY RESTRAINING ORDER

Defendants. :

----------x

Upon the annexed affidavit of David M. Butowsky, Esq. sworn to on June 18, 1973, and upon the Order to Show Cause and supporting affidavits and the Complaint, and, it clearly appearing that immediate and irreparable injury, loss and damage will result to plaintiff, it is

ORDERED that the temporary restraining order entered herein on June 8, 1973, be and the same hereby is extended to June 28, 1973 unless, within such time this order, for good cause shown, is extended, or unless the aforesaid defendants consent that it be extended for a longer time.

Dated: New York, New York
June 18, 1973

/s/ CES
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,	:	
Plaintiff,	:	AFFIDAVIT OF DAVID M. BUTOWSKY IN SUPPORT OF APPLICATION TO EXTEND TEMPORARY RESTRAINING ORDER
-against-	:	
ROBERT L. VESCO, ET AL,	:	
Defendants.	:	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID M. BUTOWSKY, being duly sworn, deposes and says:

1. This affidavit is submitted in support of plaintiff's motion to extend the temporary restraining order issued by this Court on June 8, 1973 and scheduled to expire on June 17, 1973.

2. The temporary restraining order was entered upon a showing by plaintiff that certain assets listed in the Order to Show Cause and Temporary Restraining Order belonging to various of the defendants were the only substantial assets of the defendants which could be levied upon in satisfaction of a final judgment in this action. There has been no change in plaintiff's need for such protection pending a hearing on the motion for a preliminary injunction. Moreover, at the hearing before this Court on June 7, 1973 the prospect of imminent sale of one of the foregoing assets was disclosed by counsel for one of the defendants.

3. As part of the Temporary Restraining Order the Court also restrained the further prosecution of two actions pending in the Superior Court of New Jersey, Essex County, upon a showing [illegible] proceedings was necessary to

protect and effectuate the Judgment of this Court in SEC v. Vesco, 72 Civ. 5001. A stipulation between counsel for Fairfield General, Fairfield Aviation and Skyways Leasing and counsel for plaintiff that certain documents would be provided by plaintiff has now been complied with.

4. Counsel for defendants Fairfield General, Fairfield Aviation, Skyways Leasing and Eisenhauer have informed Messrs. Shea, Gould, Climenko & Kramer that they have no objection to a renewal of the Temporary Restraining Order to June 27, 1973.

5. Counsel for defendant Vesco & Co., Inc. ("Vesco & Co.") has informed us that they oppose the further extension of the Temporary Restraining Order. Upon information and belief defendant Vesco & Co. is a Delaware corporation to which defendant Vesco and his children have transferred certain of their assets, purportedly as an estate planning device. Upon information and belief defendant Vesco & Co. is controlled by defendant Vesco, who is a fugitive from justice residing in Costa Rica, and the transfer by defendant Vesco of assets to Vesco & Co. is part of the scheme of defendant Vesco to put all looted assets beyond the reach of plaintiff ICC.

6. Absent any planned disposition or encumbrance of assets of defendant Vesco & Co. no prejudice is suffered by the extension of the Order. On the other hand, if disposition or encumbrance of assets is planned by defendant Vesco & Co., as is suggested by its opposition to the extension of the Order, irreparable injury to plaintiff may be suffered.

David M. Butowsky

Sworn to before me this

[illegible] day of June, 1973.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff

-against-

ROBERT L. VESCO, ET AL,

Defendants.

ORDER
and
AFFIDAVIT

SHEA GOULD CLIMENKO & KRAMER
330 MADISON AVENUE
NEW YORK, N. Y. 10017
MO 1-3200

and

ATTORNEYS FOR

DAVID BUTOWSKY
230 Park Avenue
New York, N.Y. 10017
725-5360

ATTORNEYS FOR PLAINTIFF

322a

Order

Transcript of Proceedings before Judge Charles E. Stewart on June 18, 1973.

(323a - 347a)

Transcript

UNITED STATES DISTRICT COURT 324a

SOUTHERN DISTRICT OF NEW YORK

- x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

vs. : 73 Civ. 2518

ROBERT L. VESCO, et al., :

Defendants. :

- x

June 18, 1973,
2 P.M.

Before:

Hon. Charles E. Stewart Jr.,
District Judge.

APPEARANCES:

SHEA GOULD CLIMENKO & KRAMER, ESQS.,
Attorneys for plaintiff,
C. Leonard Gordon, Esq., of Counsel
and
David M. Butowsky, Esq.

HANNOCH, WEISMAN, STERN & BESSER, ESQS.,
Attorneys for defendant
Vesco & Co.,
Laurence B. Orloff, Esq.,
James J. Shrager, Esq., of Counsel

an extension of time.

THE COURT: Mr. Barber or Shandley has agreed to this?

MR. GORDON: They have agreed to that. They were preparing a stipulation, which I expect to have. I haven't seen it yet. But there was no dispute about the time. There was some question as to whether they wanted more time than that, but at least that.

THE COURT: All right. Let's leave it for the time being June 27th and I will enter an order today extending the TRO until the end of the day, June 27th.

MR. ORLOFF: I take it your Honor is not at this point ruling as to our client, Vesco & Co., Inc., which is making the motion today.

The way the order is worded that has been submitted to me, it appears to continue all the restraints that your Honor initially entered, and of course we are here appearing here today for the sole purpose of contesting, respectfully, your Honor's jurisdiction in this matter. The original restraint was entered without any informal notice to us, even though we were known to be the attorneys for Vesco & Co., Inc.

I want to make one thing clear. The reason I am here today and not say on the 27th is that in view of our

position regarding your Honor's jurisdiction we didn't feel it was appropriate to simply sit by once we had notice of the action and permit the restraints to be continued with either our active consent or even our acquiescence, and that is the sole purpose we are here today.

THE COURT: Yes. As to that, I received from you I guess on Friday an affidavit and a brief.

Have you seen that, Mr. Gordon?

MR. GORDON: Yes. I received it in my office Friday. I had left and I saw it this morning.

THE COURT: Did you get a copy, Mr. Butowsky?

MR. BUTOWSKY: No, sir.

THE COURT: Are you proposing to answer those papers?

MR. GORDON: Yes, your Honor. I wanted to request the Court until Friday to answer those papers.

MR. ORLOFF: May I be heard on that?

THE COURT: Yes. How should we proceed, Mr. Orloff? You have had to come here from New Jersey. Do you want to make your argument today or would you rather wait until you have seen Mr. Gordon's and Mr. Butowsky's papers?

MR. ORLOFF: It seems to me, your Honor, that the Court is faced today with a motion made on the basis of the papers that were initially filed by the plaintiff in this

matter and that at least at this stage of the case your Honor ought to be and I respectfully submit should be ruling on the basis of the complaint before you and the supporting affidavits before you, because it was on that basis that your Honor issued the restraining order against Vesco & Co., Inc. and it is presumably on that basis as of today that your Honor is being asked on the one hand by the plaintiff to continue that restraining order and on the other hand by us to dismiss.

Now, whatever other papers counsel may come up with subsequent to today, whether they do or don't have a bearing on any new case that the plaintiff has brought, it seems to me that the complaint as filed and the allegations that are presently before the Court should determine whether that restraining order and indeed any process against Vesco & Co., Inc. should continue for one minute longer, not to mention four days longer, and as we have pointed out in our moving papers and in our brief, and I don't know that any answering papers as such can really respond to that particular point, there is nothing in this complaint filed by the plaintiff which in any way makes any allegation of wrongdoing against Vesco & Co., Inc. Indeed, the complaint goes to great pains in the very first count to state what is being charged as a violation of the Securities Act and in paragraph 6 of the

first count of the complaint the plaintiff specifically alleges that the defendant Vesco and the defendants named in the next succeeding paragraph engaged in what in essence is charged to be a 10b5 violation.

THE COURT: I take it that you, in other words, would like to proceed today, and that is perfectly agreeable to me. I just wanted to find out what your thoughts were.

MR. ORLOFF: My thought, your Honor, is that on the papers before your Honor certain restraints have been issued, jurisdiction has been asserted over us, and I would like to proceed today. I see no reason for delay.

MR. GORDON: Your Honor, Mr. Orloff was giving more significance to my request on Friday than I intended. I did not propose to submit further affidavits. I was merely referring to a memorandum in reply.

THE COURT: Let's go ahead today on the question Mr. Orloff has raised. If at the end of our discussion today you feel the need to submit a further memorandum we will discuss that question.

All right.

MR. ORLOFF: Your Honor, the jurisdiction of this court in this case is premised on Section 27 of the Securit Act. That is the federal question jurisdiction that is alleged by the plaintiff and it alone with pendent

jurisdiction is the only basis alleged or which might exist for this court taking jurisdiction over this matter.

To repeat what I had started to say a moment ago, in paragraph 6 of the first count -- the first count is based upon the so-called federal question jurisdiction -- the charge is made that Mr. Vesco and certain other defendants specifically named in ensuing paragraphs have engaged in violation of the Securities Act.

In paragraph 7 of the complaint the plaintiff has specified those people who have aided and abetted, allegedly, Mr. Vesco, and has further defined the term defendant Vesco and his group, which is then used throughout the balance of the complaint.

The list of defendants comprising those two groups, the alleged aiders and abettors and defendant Vesco and his group, at no point mentions Vesco & Co., Inc. Indeed, by listing specifically one by one each of those persons that it does mention it specifically excludes Vesco & Co.

So that not only is our client not named as an alleged violator of the Securities and Exchange Act, but as we peruse the remaining counts of the complaint, again, nowhere will you find any reference to Vesco & Co., Inc., nowhere will you find any charge against Vesco & Co., Inc., nowhere will you find any allegation of wrongdoing against

Vesco & Co., Inc. They simply don't appear other than in the caption of the complaint and in the introductory paragraphs in which they are described as a Delaware corporation to which Mr. Vesco and his children have transferred stock.

Based upon this complaint -- and I should also say that the various supporting affidavits that were filed, Mr. Richardson's, Mr. Shinn's, Mr. McAlpin's and Mr. Butowsky's -- again say nothing about Vesco & Co., Inc. other than that they would like a restraint or an injunction regarding assets of Vesco & Co., Inc.

Now, I believe the short affidavit attached to our motion papers advised your Honor quite precisely who Vesco & Co., Inc. is. They are a Delaware corporation. They have an office in New Jersey.

THE COURT: Are there stockholders?

MR. ORLOFF: The stockholders consist of Mr. Robert L. Vesco as the preferred stockholder and the common stockholders are or is Patricia Vesco, his wife, as custodian for the children, and this was pursuant to estate planning techniques that were talked about and discussed as early as 1968 and were implemented during the year 1972. Mr. Vesco is neither an officer nor director of the company. He is a perferred stockholder in the company. His preferr

stock has no voting rights. He is not a voting stockholder.

That, in essence, is Vesco & Co., Inc. They do no business in New York. Their primary and almost sole activity consists of their ownership of approximately 846,000 shares of International Controls Corporation.

THE COURT: Who are the officers?

MR. ORLOFF: The officers are Mrs. Shirley Bailey and Mrs. Patricia Vesco.

This company has been in existence since approximately July of 1972, and its stock holdings are as set forth to your Honor.

By way of factual presentation, I think it important your Honor know who we are talking about when we talk about Vesco & Co., Inc. I don't think that in any way this adds to the plaintiff's claim in this case, this complaint as drawn, under any construction, strained or otherwise. The complaint is simply a charge against Mr. Vesco and certain designated individuals and corporations having to do in large part with allegations similar to those contained in the SEC suit which your Honor tried with additional allegations focusing primarily upon an airplane. The existence of Vesco & Co., Inc., the function of Vesco & Co., Inc., has nothing whatsoever to do with any of those allegations, and indeed, the complaint upon which the plaintiffs' case for jurisdiction

must be founded says nothing whatsoever about it.

The only other document that has been presented in connection with this extension order, Mr. Butowsky, your Honor's appointed counsel, has indicated that upon information and belief Vesco & Co. is a Delaware corporation to which defendant Vesco and his children have transferred certain of their assets, purportedly as an estate planning device.

Well, without the purportedly, in essence, he has confirmed what we have told your Honor, and there is nothing else in this affidavit that in any way gives any rise or basis to jurisdiction on the part of this court. A mention is made of the fact that somehow plaintiffmay be irreparably injured if the restraint is lifted and great emphasis is put upon the fact that I wouldn't consent to any further extension of your Honor's temporary restraining order. Well, I wouldn't consent to it, as I stated, because, one, it was entered without any notice of any sort to us, and two, if your Honor does not have jurisdiction I see no reason to consent just for the sake of having everything heard on a particular day.

Beyond that, your Honor, we have cited in our brief many cases which point out that even if somehow the plaintiff were to weave out ofthe remaining allegations of

his complaint, and I don't see how he can, some sort of a claim of common law wrong or non-federal question wrong against Vesco & Co., Inc., his specifically having excluded them from the federal question claim by the paragraphs I have cited to your Honor means that his complaint must fail for lack of jurisdiction, and the federal question jurisdiction being the only basis upon which this court can assert claim over Vesco & Co., Inc., the case should stand or fall on that.

Now, Vesco & Co., Inc. is not a phantom. It is a corporation. It is in New Jersey. It is capable of suing and being sued in New Jersey. There is absolutely no reason why the plaintiff, if it has a claim, and I question that it does, cannot bring the suit in the appropriate jurisdiction, and to somehow tag us along on the tail ofa massive action against many other defendants and tag us along on a restraining order I think is inappropriate.

I don't think the question before your Honor is who gets hurt more by a restraining order or no restraining order, and without getting into the merits of the case, because I am solely arguing jurisdiction, I feel I must point out to your Honor that it is the plaintiff who has the burden to demonstrate that he is entitled to a restraint, it is not the defendant's burden to show how he would be hurt by a

restraint. But given the fact, as we submit, this court has no jurisdiction to start with, the complaint and of course all restraining orders should fall with it.

Thank you.

MR. GORDON: May it please the Court, the activity of Vesco & Company is more than that apparently of an estate planning corporation. I would just by way of preface like to call the Court's attention to the fact that Vesco & Company, whose officers purport to be Shirley Bailey and Patricia Vesco, has just commenced an action in the Chancery Court, Superior Court of New Jersey, against defendants Lawrence Richardson, International Controls, purporting to be derivative and class as to International Controls, Emery Sears, Malcolm McAlpin, Almer A. Sticco, Frank G. Beatty, Michael Rossi, Wilbert Snipes, Philip P. Gustlin, George D. Gould, Charles S. Desmond, John Mosler, Allen Shinn, Joseph L. Weiner and Gary Benjamin. The last five were the court appointed directors.

This case amounts to nothing less than a collateral attack in Chancery Court, New Jersey, on this court's jurisdiction in SEC v. Vesco et al. This is the third case that International Controls has been faced with in the court of less than two weeks, and apparently the activities of this company include being a litigant against International

Controls.

We are proposing to move in a similar fashion as we have against the Skyways case and the Fairfield General case against this matter, but I think we are also considering moving in SEC against Vesco. We have not yet had a chance to discuss this with the SEC. I just got a copy of these papers this morning.

Your Honor, the jurisdiction of this court against Vesco & Co. is based upon the complaint and the affidavit, and while we have indeed the burden of proof of showing irreparable harm in order to obtain a preliminary injunction, the allegations of the complaint are what the court must look to to sustain the subject matter jurisdiction. I think the burden of proof is not on us to prove the alleged facts.

In the complaint we allege that International Controls has been severely injured by the activities of defendant Vesco and others, who engaged in a scheme in violation of Section 10b5 to convert assets of International Controls, including IOS Properties and the 707 airplane, to convert these assets to their own benefit and control. Vesco & Company was named in that complaint as a participant in that scheme to the extent that Mr. Vesco transferred his assets to Vesco & Co. in connection with this scheme and an order to prevent International Controls from having any

assets with which to satisfy a judgment should it prevail in this litigation.

That portion of the affidavit that was read to the court this morning didn't end where counsel ended the reading. Special counsel stated in the affidavit, as was read, "Upon information and belief, defendant Vesco & Co. is a Delaware corporation to which defendant Vesco and his children have transferred certain of their assets purportedly as an estate planning device."

My brother objected to the use of the word "purportedly." I submit he will have an opportunity to prove whether that was the purpose or not, just as we should have an opportunity to prove our case.

It continues: "Upon information and belief, defendant Vesco & Co. is controlled by defendant Vesco, who is a fugitive from justice residing in Costa Rica, and the transfer by defendant Vesco of assets to Vesco & Co. is part of the scheme of defendant Vesco to put all looted assets beyond the reach of plaintiff International Controls."

That is the end of the paragraph which was partially read.

Your Honor, if this case charged Vesco & Co. with a pendent wrong, not directly connected with the 10b5 violation, but pendent to the 10b5 violation, this court would

still have jurisdiction over the subject matter and service would run to Vesco & Co. in New Jersey. I cite Kane v. Central American Mining and Oil, 235 Fed. Supp. 559, Southern District of New York 1964.

But here we have not alleged that Vesco & Company have wronged and it was pendent to it. Vesco & Co. is an integral part of the scheme to defraud International Controls and take away assets that rightfully belong to it. It seems to me they belong in the case, your Honor.

This court in the action SEC v. Vesco appointed special counsel and appointed citizens to serve as directors of this company as a relief framed specially to meet the exigencies of the situation. This company appeared to be viable. A receivership would have triggered events that might have ended the viability of this company, and this court, very wisely, I believe, fashioned a relief to accomplish the protection of the company without accomplishing its extinction.

In that final judgment it directed special counsel to take all appropriate action, including but not limited to institution and prosecution of suits on behalf of International Controls, Section 3(b) of the final judgment.

Section 3(d), it directed special counsel, pending the investigation and accounting by the special counsel, to take

immediate necessary or appropriate action to protect International Controls' claims, interests and rights and to pursue all possible claims against the defendants herein or any other person, including but not limited to the commencement of legal proceedings to prevent the dissipation or flight of any funds or other assets, the placing of a stop transfer order on securities beneficially owned or controlled by said defendants and/or the institution of appropriate action to freeze and preserve the assets of said defendants or others who may be obligated to International Controls.

At the outset, near the outset, special counsel's investigation showed him that International Controls was the victim of a massive scheme in violation of Section 10b5. It showed him that certain assets, the last known assets that would be available to satisfy a judgment of this court, were about to disappear, namely, the 707 airplane, which was subject to a contract for sale. He came into court pursuant to the directions of this court in its final judgment and brought an action to prevent the dissipation of those assets. The only other assets known to special counsel that were available for final judgment was Mr. Vesco's own stock in International Controls and the stock of Vesco & Co., to which we believe he transferred his stock in order to protect

it from the judgment in an action of this sort.

This action is in furtherance of the directions of this court in SEC v. Vesco and we respectfully ask that the jurisdiction be maintained.

We thank your Honor for the extension of the temporary restraining order.

MR. ORLOFF: May I respond briefly, your Honor?

THE COURT: Yes, Mr. Orloff.

MR. ORLOFF: Your Honor, we are not here arguing over whether Vesco & Co., Inc. can or can't be sued and we are not here arguing over what powers your Honor did or did not give to the special counsel. We are arguing about whether this court in this jurisdiction has control over this particular claim against Vesco & Co., Inc., and I don't think that the type of a bootstrap argument that counsel has advanced to your Honor helps the situation one bit.

Your Honor did give special counsel broad powers. By giving him those powers I am certain that your Honor neither intended to and I am certain that your Honor would agree with me that you did not intend to expand the scope of this court's jurisdiction beyond what it is by law, and to attempt to interpret your Honor's appointing order to enable the special counsel to sue anybody he chooses to before this court in this jurisdiction I believe, respectfully, is a

perversion of that order.

Now, it is interesting that counsel really says nothing about any particular allegation of this complaint relating to Vesco & Co. He says that it is the position of ICC that Vesco & Co., Inc. somehow participated in some kind of a scheme to put assets beyond the jurisdiction. I don't know what jurisdiction he is talking about. Vesco & Co., Inc. is a Delaware corporation. It's got an office in New Jersey. It is not in Costa Rica. It is not in Nassau. It is not in some other hemisphere, some other place. It is across the river and down in Delaware also.

There is nothing, I repeat, in this complaint that in any way supports what counsel would now ask your Honor to rule on. And I must say, and I say this most respectfully and advisedly to your Honor, that if jurisdiction is going to be sustained over defendants on the basis of a conclusional affidavit by special counsel appointed by your Honor that says nothing more than upon information and belief, unstated as to what that information is, that he believes and then goes on to allege certain conclusionary acts, if that is going to be the basis for sustaining jurisdiction over defendants, then I say most respectfully we are no longer in a judicial proceeding, we are in an investigatory proceeding.

... I know, I am sure, that was not the intent of your Honor's order, that you appointed counsel to bring actions and to act within the usual judicial type procedure and proceedings, and all we are saying to the court is that in this case he ought to follow the usual rules and be treated like any other litigant, and being treated like any other litigant, this kind of a basis for jurisdiction must fall as soon as it is spoken out loud.

THE COURT: I am not sure I follow you. How should he proceed?

MR. ORLOFF: If he feels that ICC has a claim against Vesco & Co., Inc. he should proceed in that jurisdiction where he has jurisdiction over Vesco & Co. It is as plain and simple as that, your Honor.

The mere fact that he was appointed, among other things, to protect ICC's position does not automatically give him the right to carry on all of that protection before this court in this jurisdiction. Again, I can't conceive that your Honor intended that, and I would say most respectfully if your Honor did intend that then your Honor's order goes beyond the statutory jurisdiction provided for federal courts.

Now, he has a forum for any cause of action he wants to bring. Vesco & Co. is available to be sued. I don't

mean that as a welcome invitation, but it is a fact. This is not the place to do it and, indeed, he has not done it. His complaint is devoid of any charge. If this court's jurisdiction has to depend on this kind of a statement in a last minute affidavit, then jurisdiction loses all meaning, the cases lose all meaning, the statute loses all meaning, and what we have, quite simply and frankly, is a determination that anyone special counsel wants to sue having anything whatsoever to do in his mind with the Vesco matter can be sued in this jurisdiction, and by virtue of your Honor's order and his powers this is the right place for it. Such a determination would be contrary to all established principles, both statutory and common law, and would be particularly repugnant on the facts of this motion in light of the complete absence of any charge in these pleadings against our client.

THE COURT: The ICC stock that Vesco & Co., Inc. now holds, is that now in the hands of a trustee? Did I hear somebody say that a trust had been created?

MR. ORLOFF: No, sir. The ICC stock is not in the hands of Vesco & Co. as a corporation. I should point this out also. Again, not wanting to argue the merits, the charge is made that this is part of a scheme by Mr. Vesco to divest himself of his stock in ICC. Plaintiff conveniently fails to

remind your Honor, as we stated in the affidavit, that Mr. Vesco is the preferred shareholder of Vesco & Co., Inc. and that the preferred shareholder receives the first approximately 2.5 million dollars of proceeds out of Vesco & Co., Inc. If this were a scheme to divest himself of his assets he would hardly have made himself that shareholder in Vesco & Co., Inc. who gets the first distribution out of it.

THE COURT: What is the first distribution? You mean by way of dividends or what?

MR. ORLOFF: By way of dividends or other distribution. The preferred shareholder gets paid out first.

THE COURT: How is the operation set up? As I understand it, it is for the benefit of Vesco's children. Is that correct?

MR. ORLOFF: Primarily. In other words, once the preferred shareholder -- we are talking theoretically now-- were to be paid out his dollar amount as reflected by his stock, all remaining equity would go to the common shareholder, which is Mrs. Vesco as custodian for the children.

THE COURT: This wouldn't be by way of dividend, I take it, but rather in liquidation.

MR. ORLOFF: It is not anticipated that there will be any dividends.

THE COURT: How much was the stock worth when it went into Vesco & Co., Inc., do you know?

MR. ORLOFF: My recollection from the affidavit, your Honor, is that it was valued at somewhere around 2.5 million dollars, almost exactly that figure.

THE COURT: The stockholders of the common stock, is there just one stockholder or is it Mrs. Vesco and the children?

MR. ORLOFF: It is Mrs. Vesco as custodian for the children under the Uniform Gifts to Minors Act.

THE COURT: Is the common stockholder?

MR. ORLOFF: That's right.

THE COURT: The officers are Mrs. Bailey, is it

MR. ORLOFF: Yes, sir.

THE COURT: And Mrs. Vesco.

MR. ORLOFF: That's right.

THE COURT: Is there anything like an executive committee?

MR. ORLOFF: No, sir.

THE COURT: So any decision, I take it, which is to be made with respect to the ICC stock would be made by the two officers, one of whom is also the common stockholder so it is those two ladies who have the decision making authority.

MR. ORLOFF: They have the legal control over the affairs of Vesco, that's right.

THE COURT: Mrs. Bailey was Mr. Vesco's secretary, was she not, at ICC?

MR. ORLOFF: That's right.

THE COURT: Is it Mrs. Bailey?

MR. ORLOFF: I believe it is.

THE COURT: Is there a certificate of incorporation available?

MR. ORLOFF: We don't have it with us, your Honor, but I am sure we could get one to your Honor within a couple of hours.

THE COURT: It is not in your papers, is it, Mr. Gordon?

MR. GORDON: No, your Honor.

THE COURT: Do you have a copy?

MR. GORDON: No, your Honor, we don't.

MR. ORLOFF: It was incorporated, according to our affidavit, on July 12, 1972.

THE COURT: In Delaware?

MR. ORLOFF: In Delaware, yes, sir. In connection, I should say, with the transfers to Vesco & Co., Inc. certain tax rulings were requested of the Internal Revenue Service and received regarding the tax treatment of these transactions.

I am not intimately familiar with that aspect of it, but I know they were requested and they were received, and the transfers were only made after those rulings were received.

THE COURT: I think, Mr. Orloff, that I am going to deny your motion. I think there is enough connection here to provide jurisdiction.

I am going to deny it, however, without prejudice to your right to renew the motion as further facts may be developed, and you may renew your motion whenever you feel it appropriate to do so.

I am going to extend the TRO in your case also for the period to June 27th. I emphasize that I am doing this without prejudice because you may wish to renew your motion on June 27th, particularly if you have something new to show me. I don't know whether the certificate of incorporation is useful. I don't know whether these tax rulings are useful on this question of jurisdiction. It may be that you want to look into those.

Do you feel the need, Mr. Gordon, to submit a further brief?

MR. GORDON: No, your Honor.

THE COURT: All right. Let's leave it that way.

MR. ORLOFF: May we just have some clarification, your Honor, as to what the 27 now portends as far as we are

concerned? The original order to show cause that your Honor signed on June 8th, while it contained certain restraints against Vesco & Co., Inc., did not order us to show cause at any time, but rather just ordered Fairfield and Skyways to show cause why the preliminary injunction should not be issued.

Do I take it that the 27th is a return date for us also to show cause regarding a preliminary injunction? Just so we know where we stand procedurally. We may wind up challenging jurisdiction, just as we have today, but I would like to know in what context we are appearing. The plaintiff's papers were a little confusing in that respect.

THE COURT: I take it that it is a return date for you. Am I correct in that, Mr. Gordon?

MR. GORDON: Yes, your Honor, that would be the return date.

THE COURT: All right. Anything else?

All right. Thank you, gentlemen.

Notice of Motion by Vesco & Co. to dismiss, dated June 26, 1973.

(348a - 351a)

Notice of Motion 349a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff,	Index No. 73 Civ. 2518 (CES)
-against-	NOTICE OF MOTION TO DISMISS COMPLAINT FOR LACK
ROBERT L. VESCO, et al, Defendants.	OF JURISDICTION, ETC.

TO: SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for Plaintiff
330 Madison Avenue
New York, New York 10017

S I R S :

PLEASE TAKE NOTICE that on Wednesday, June 27, 1973 at 2:30 P.M., or as soon thereafter as counsel may be heard, we will move before the Hon. Charles Stewart, United States District Court, at Room 506, United States Courthouse, Foley Square, New York for dismissal of the within complaint and all proceedings herein as to the named defendant, Vesco & Co., Inc. (erroneously designated in the complaint as "Vesco & Co."), on the following grounds:

1. Lack of subject matter jurisdiction, in accordance with F.R.C.P. 12(b)(1);

2. Lack of jurisdiction over the person of Vesco & Co., Inc., in accordance with F.R.C.P. 12(b)(2);

3. Insufficiency of process as to Vesco & Co., Inc. in accordance with F.R.C.P. 12(b)(5); and

4. Failure to state a claim upon which relief can be granted in accordance with F.R.C.P. 12(b)(6).

The within motion will be based upon the pleadings on file in this cause, the affidavit of Milton H. Stern previously filed with the Court, and the memorandum of law submitted herewith.

Dated: June 26, 1973

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Vesco & Co., Inc.
(Named in the Complaint as Vesco & Co.)

By _____
LAURENCE B. ORLOFF
A Member of the Firm

744 Broad Street
Newark, New Jersey 07102
(201) 621-8800

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al,

Defendants.

Index No.
73 Civ. 2518 (CES)

NOTICE OF MOTION TO DISMISS COMPLAINT FOR LACK OF JURISDICTION, ETC.

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.
744 Broad Street
Newark, New Jersey 07102
(201) 621-8800

Notice of Motion 351a

Memorandum of Law on behalf of Vesco & Co., Inc. (Motion Returnable June 27, 1973).

(352a - 377a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al,

Defendants.

Index No.
73 Civ. 2518 (CES)

MEMORANDUM OF LAW
ON BEHALF OF VESCO & CO., INC.
[MOTION RETURNABLE June 27, 1973]

Of Counsel:
Laurence B. Orloff
James J. Shrager

On the Brief:
Gary S. Freedman

HANNOCH, WEISMAN, STERN & BESSER
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744 Broad Street
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INTRODUCTORY STATEMENT

This memorandum is submitted in support of defendant Vesco & Co., Inc.'s motions to dismiss and in opposition to plaintiff's applications for injunctive relief, including plaintiff's application to, in effect, stay prior Court proceedings in New Jersey.

On or about June 7, 1973, a complaint was filed by International Controls Corp. (hereinafter referred to as "ICC") against Robert L. Vesco and a number of others. The complaint purports to allege violations of the Federal Securities Laws and other common law wrongs, related in the main to two subjects: (a) transactions by those designated as "Vesco and his group" and certain named aiders and abettors regarding assets and funds of I.O.S. and other related companies, and (b) transaction by some of the same persons involving a Boeing 707 jet plane.

Vesco & Co., Inc. (erroneously referred to in the complaint as Vesco & Co.) is named as a defendant in the caption of this action and is "identified" in Paragraph 5(r) of the complaint in the recital of dramatis personnae. It is not mentioned thereafter, it is specifically excepted by obviously deliberate omission from those charged with violation of the Federal Securities Laws - the specific basis alleged for this Court's jurisdiction - and no other charges are directed to it by name or, as we read the complaint, even by implication

Upon this document, then (and supporting affidavits, which likewise contain no charges against Vesco & Co., Inc.), the plaintiff appeared before this Court on an ex parte basis on June 7th, or June 8th, without any notice to Vesco & Co., Inc. or its attorneys (although their counsel well knew that we were their attorneys) and in flagrant violation of F.R.C.P. 65(b), and secured a temporary restraining order directed to Vesco & Co., Inc. containing arguably broad restraints against "use", "disposition", "encumbrance", or the like, of not only its primary asset - stock of ICC - but "any other assets".

The Order to Show Cause containing these restraints likewise appeared to set a return day of June 13, 1973, at 2:00 P.M. for a hearing as to further injunctive relief directed against, inter alia, Vesco & Co., Inc. That Order, however, directed only that Fairfield General and Skyways--and no other defendants--show cause on June 13, 1973. Injunctive relief was sought nonetheless against other defendants, including Vesco & Co., Inc., despite the lack of formal notice. Vesco & Co., Inc. has taken and continues to take the position, however, that this Court has no jurisdiction in this matter, and that the above Order is merely another example of why this Court should not, under any circumstances, be proceeding at this point on any substantive basis with respect to Vesco & Co., Inc.

conceding, that jurisdiction should be found, Vesco & Co., Inc. respectfully contests the authority of this Court to enjoin the suit presently pending in the State Court of New Jersey.

STATEMENT OF FACTS

On or about June 7, 1973, plaintiff, ICC, filed a complaint against Robert L. Vesco and a number of other individuals and corporations. Among the named defendants is the movant, Vesco & Co., Inc. The complaint generally alleges that Robert L. Vesco and defendants, LeBlanc, Meissner, Strickler, Greze, Beatty, Clay, Snipes, Weymar, Straub, Buhl, Dodd, Eisenhauer, Phillipe, Bailey, Grady, IOS, Bahamas Commonwealth Bank, International Ban Corp., Value Capital, Kilmorey Investments, Butler's Bank, Bank Cantrade, Fairfield General, Fairfield Aviation and Skyways (defendants Vesco, LeBlanc, Meissner, Stricker, Greze, Beatty, Clay, Dodd, Grady, and Bailey, are referred to as "Vesco and his group") did by means of Interstate Commerce and the facilities of National Securities Exchanges defraud plaintiff and its stockholders in violation of the Securities Exchange Act of 1934 (15 U.S.C. §78aa). The purpose of the alleged fraud was to enable defendant, "Vesco and his group", to use the assets of ICC and its subsidiaries to obtain for themselves control of IOS. The sole basis for federal jurisdiction rests on this alleged violation of the Security Laws (15 U.S.C. §78aa). Plaintiff does not allege in its complaint or in any of its affidavits that Vesco & Co., Inc. participated in any way in the alleged scheme.

Vesco & Co., Inc. is incorporated in the State of Delaware with its only office in New Jersey. Its assets consist almost entirely of stock of ICC. Vesco & Co., Inc. does not conduct any business and does not have any contacts with the State of New York. The controlling stockholder of Vesco & Co., Inc. is Patricia J. Vesco as custodian for the four children of Robert L. and Patricia J. Vesco. The company was created in July, 1972, after revenue rulings were received, which established the viability of the company as a long considered estate planning technique.

On June 1, 1973, prior to the institution of the within action, Vesco & Co., Inc. instituted a suit entitled "Vesco & Co. Inc. v. Lawrence B. Richardson, et al", Docket No. C-3448-72, in the Superior Court of New Jersey, Chancery Division, Bergen County (a copy of the front page of the complaint with the filing date affixed is attached hereto as Exhibit "A"). This suit was brought by Vesco & Co., Inc. on its own behalf and on behalf of ICC and its other shareholders, and alleged various breaches by former officers and directors of ICC of their fiduciary obligations to ICC and its stockholders. This included the utilization and misappropriation of ICC funds for personal benefits, self-dealing in corporate assets, and other misconduct. Thereafter, on or about June 7, 1973, the matter now before this Court was instituted by ICC against Robert L. Vesco, et al.

ARGUMENT

POINT I

THE COMPLAINT SHOULD BE DISMISSED AS TO DEFENDANT, VESCO & CO., INC., FOR LACK OF SUBJECT MATTER JURISDICTION.

Plaintiffs assert federal court jurisdiction over the cause of action against Vesco & Co., Inc. based upon § 27 of the Securities Exchange Act of 1934 (15 U.S.C. § 78aa) and the principles of pendent jurisdiction.

A reading of the complaint reveals that plaintiff has alleged in effect that "Vesco and his group" have committed acts in violation of Rule 10b-5 and that they have committed other acts which may fall within the pendent jurisdiction of the federal court. However, nowhere in the complaint is it alleged that Vesco & Co., Inc. committed any act that could even be remotely connected with a violation of the Securities Laws. In fact no allegations whatsoever are asserted against Vesco & Co., Inc. and its name only appears in the caption of the complaint and in the description paragraph 5(r). When there are no facts alleged, there can be no jurisdiction.

Paragraph 6 of the complaint sets out the allegations that Rule 10b-5 was violated - this being necessary to

establish federal question jurisdiction. (Paragraphs 8 through 65 of the complaint set out specific acts that comprised the scheme complained of in Paragraph 6). Paragraph 7 lists the defendants who took part in the alleged violation of the Securities Laws complained of in Paragraph 6 and the remainder of the complaint. Specifically excluded from this list is Vesco & Co., Inc. No violation of the Securities Act of 1934 is asserted against it. By this exclusion, ICC has admitted it has no basis for any action against Vesco & Co., Inc. based on the Securities Act of 1934. It cannot be said that the acts of fraud (the basis of a 10b-5 lawsuit) committed by Vesco & Co., Inc. are to be implied from the allegations of the complaint. Federal Rule C.P. 9(b) requires that "all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity."

There being no claim based on federal law asserted against Vesco & Co., Inc., the complaint should be dismissed for lack of jurisdiction.

Neither can ICC assert that any possible but unstate claims against Vesco & Co., Inc. are within the jurisdiction of this court due to its pendent jurisdiction. It is well settled policy that "the doctrine of pendent jurisdiction may be invoked only where the claim based upon a substantial

federal question is made against the same defendants with respect to whom non-federal claims are asserted." Rosenthal, Inc. v. Aetna Casualty & Surety Company, 259 F. Supp. 624, 630 (S.D.N.Y. 1966). See also, Wojtas v. Village of Niles, 334 F. 2d 797 (7th Cir. 1964), cert. denied, 379 U.S. 964 (1965); New Orleans Public Belt R.R. v. Wallas, 173 F. 2d 145 (5th Cir. 1949); Lawes v. Nutter, 292 F. Supp. 890 (S.D. Texas 1968); Maher v. Newton Creek Towing Company, 190 F. Supp. 933 (S.D. N.Y. 1961). The federal question necessary to invoke pendent jurisdiction must appear in the plaintiff's statement of its claim. Rosenthal, supra. at 628; see cases cited therein. It is clear from reading the complaint that no violation of the Securities Act of 1934 is asserted against Vesco & Co., Inc. As previously discussed, it is specifically excluded by ICC in its complaint from the alleged federal law violation. Absent a qualifying federal question claim against defendant, there is nothing to which other claims may pend. Rosenthal, supra.; Weiss v. Sunasco, Inc., 295 F. Supp. 824 (S.D.N.Y. 1969); see also, Letmate v. Baltimore and Ohio R.R., 311 F. Supp. 1059 (D. Md. 1970); Tucker v. Shaw, 308 F. Supp. 1 (E.D.N.Y. 1970); Mota v. Boyd, Weir and Sewell, Inc., 200 F. Supp. 306 (S.D.N.Y. 1962). It is therefore absolutely clear that a defendant cannot be held subject to the jurisdiction

of the court on the theory of pendent jurisdiction unless there is a substantial federal question or cause of action also asserted against it. (It is therefore not necessary to examine the criteria of pendent jurisdiction as set out in United Mine Workers v. Gibbs, 383 U.S.715 (1966), to see if that doctrine would even be applicable in this case if a substantial federal question had been raised against Vesco & Co., Inc.)

A dismissal of the complaint in this action would be consistent with the Court of Appeals decision in O'Neill v. Maytag, 339 F. 2d 764 (2d Cir. 1964), where the court stated that dismissal of the complaint as to some defendants for failure to state a cause of action was held to defeat federal jurisdiction over plaintiffs' non-federal claims against these defendants. In this case no federal claim is even asserted against Vesco & Co., Inc. Therefore, no federal jurisdiction can possibly exist over any alleged non-federal pendent claims.

The case cited by ICC at oral argument on June 18, namely, Kane v. Central American Mining and Oil, 235 F. Supp. 559 (S.D.N.Y. 1964), does not in any way support the plaintiff's position herein. On the contrary, the Kane case supports the position of Vesco & Co., Inc., for it was held in that case that certain pendant claims asserted against the defendant would be

valid for jurisdiction purposes only if federal claims were also properly pleaded. It is important to note that both federal claims and pendant claims were pleaded against the same defendants in Kane. This is clearly distinguishable from the case at bar, in that no federal claim whatsoever has been pleaded against Vesco & Co., Inc. As a matter of fact, no claims at all have been pleaded against this defendant. Under such a situation there are no circumstances under which jurisdiction can be found to lie against Vesco & Co., Inc. in this suit.

POINT II

THE COMPLAINT SHOULD BE DISMISSED AS TO DEFENDANT, VESCO & CO., INC., FOR LACK OF IN PERSONAM JURISDICTION AND INSUFFICIENCY OF PROCESS.

The Securities Act of 1934 provides:

"Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found." 15 U.S.C. § 78aa

The act in effect provides for service of process anywhere in the United States. However, where a claim does not arise under the Securities Act (or any other federal act which specifically provides for special service of process) then Fed.R.C.P. 4(f) is the governing provision for where and how a summons and complaint in a federal action must be served. This rule provides that "all process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held, and, when authorized by a statute of the United States or by these rules, beyond the territorial limits of that state."

In this case, Vesco & Co., Inc. was not served within the territorial limits of New York State, it being served in Delaware. There being no applicable federal statute providing for extra-territorial service, service of process was not properly effected and the court does not have in personam jurisdiction over Vesco & Co., Inc. The complaint should therefore be dismissed as to it.

There is no theory of law that will support the sufficiency of process in this case. If one were even to assume for the purpose of argument only that jurisdiction in this case could be based on diversity of citizenship (which it can't), the process on Vesco & Co., Inc. would still be insufficient even considering any state long arm statute - for the requirements of due process have not been met.

"In order for the corporation to be amenable to service in a state, it must have minimal contacts with the state, sufficient to warrant subjecting it to suit there without affending due process standards." Grammenos v. Lemos, 457 F. 2d 1067, 1072 (2d Cir. 1972). See, McGee v. International Life Insurance, 355 U.S. 220 (1957); International Shoe Co. v. State of Washington, 326 U.S. 310 (1945). More

than an incidental contact with the State is necessary, although the party does not have to be authorized to do business in the state or have officer there. In this case, Vesco & Co., Inc. fit none of the requirements necessary to sustain this Court's jurisdiction. It has absolutely no contact whatsoever with New York State. It transacts no business in New York State and has no agents functioning in New York State. It is incorporated in the State of Delaware with an office in the State of New Jersey. To subject it to jurisdiction before this Court would go beyond any sense of fair play, due process, or substantial justice as enunciated by the courts.

Where a defendant challenges the in personam jurisdiction of the Court, the burden of proof that he has contacts with the state sufficient to warrant jurisdiction must be borne by the plaintiff. Fergus Motors v. Standard Triumph Company, 130 F. Supp. 780, 782 (S.D.N.Y. 1955); Kelley v. Three Bays Corp., 173 F. Supp. 835, 837 (S.D.N.Y. 1959), aff'd, 276 F. 2d 958 (2d Cir. 1960); Chunky Corp. v. Blumenthal Bros. Chocolate Co., 299 F. Supp. 110, 114 (S.D.N.Y 1969). It is clear under the facts of this case that plaintiff cannot meet this burden and, therefore, service upon defendant Vesco & Co., Inc., outside the State of New York is improper and must be quashed, and this suit dismissed.

POINT III

THE COMPLAINT SHOULD BE DISMISSED AS TO DEFENDANT, VESCO & CO., INC., FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Pursuant to F.R.C.P. 12(b)(6), a complaint should be dismissed if there is a "failure to state a claim upon which relief can be granted." As indicated above, there has been no claims asserted against the defendant, Vesco & Co., Inc. Rather, it seems to rely upon a blanket conclusionary contention, not contained in the complaint, that Vesco & Co., Inc. is in some way associated with defendant, Robert L. Vesco, and that this is sufficient for jurisdiction, even in the absence of traditional legal principles.

It would seem transparent that if no claims are asserted, there is certainly nothing for the Court to consider or upon which to grant relief. Vesco & Co., Inc. is mentioned once in the entire complaint filed by plaintiffs, that being in paragraph 5(c), a description of the various defendants. No other facts have been alleged.

We are quite mindful of the fact that the Federal Rules of Civil Procedure do not require a claimant to specify in detail all facts upon which a claim is based. We recognize that all that the rules require is "a short and plain statement

of the claim". There has been nothing at all. Such practice not only contravenes Rule 9(b) F.R.C.P., which requires that all averments of fraud be stated with particularity, but also is directly contrary to the case law of this district and this circuit.

Where insufficient facts are pleaded in a complaint, or where "mere conclusory allegations" are asserted, the complaint must fail for failure to state a claim upon which relief can be granted. Shemtob v. Shearson, Hammill & Co., 448 F. 2d 442 (2d Cir. 1971). See also Israel v. The City Rent & Rehab. Admin. of New York, 285 F. Supp. 908 (S.D.N.Y. 1968), where a complaint was ruled insufficient under Rule 12(b)(6) because the plaintiff pleaded only "vague and conclusory allegations."

Furthermore, this complaint must fail as to defendant, Vesco & Co., Inc., for as contended above, there is no federal question presented as to this defendant. Even if this Court should find that somewhere in this complaint there is a pendant claim lurking against Vesco & Co., Inc., that would not be enough to establish jurisdiction in the absence of any federal claim. A similar situation arose in Shemtob, where the Court stated:

> "Thus plaintiffs' claim is nothing more than a garden-variety customer's suit against a broker for breach of contract, which cannot be bootstrapped into an alleged violation of § 10(b) of the Exchange Act, or Rule 10b-5, in the absence of allegation of facts amounting to scienter, intent to defraud, reckless disregard for the truth, or knowing use of a device, scheme or artifice to defraud. It is insufficient to allege mere negligence, SEC v. Texas Gulf Sulphur, 401 F. 2d 1276, 1290-1291 (2d Cir. 1969), breach of contract or breach of a stock exchange rule, Colonial Realty Corp. v. Bache & Co., 358 F. 2d 178 (2d Cir.), cert. denied, 385 U.S. 817, 87 S. Ct. 40, 17 L. Ed. 2d 56 (1966)."

The language used by the Court in Israel is also applicable to this situation:

> "No substantial federal question is presented under any of the constitutional provisions or statutes cited and this Court lacks jurisdiction over the subject matter of the complaint. The complaint fails to state a claim on which relief can be granted; it fails to set forth facts; it set forth only a series of conclusory charges devoid of factual content lacking legal significance. The complaint is dismissed."

Attorneys for plaintiff have had ample opportunity to cure the obvious defects in this complaint as to the defendant, Vesco & Co., Inc. They have failed to do so, and, on the contrary, have consistently failed to allege any

specific facts against this defendant. Vesco & Co., Inc. respectfully contends that under such circumstances the complaint must be dismissed for failure to state a claim upon which relief can be granted.

POINT IV

ASSUMING, BUT NOT CONCEDING, THAT JURISDICTION OVER VESCO & CO., INC. IS FOUND BY THIS COURT, IT IS NOT WITHIN THE POWER OF THIS COURT TO ENJOIN THE SUIT PENDING IN NEW JERSEY STATE COURT.

With respect to the injunctive relief sought by C as a result of the Order to Show Cause dated June 22, 73, we incorporate by reference our contentions with spect to jurisdiction and process. But even were we to sume for the purpose of this argument that jurisdiction ists, there would still be no basis for an injunction.

The statute under which plaintiff seeks an junction, pendente lite, is 28 U.S.C.A. § 2283, which states:

> "A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect and effectuate its judgments."

As indicated by the language of the statute, this ti-injunction rule is quite broad, and may only be circumnted in three very narrow, precise situations, namely:) where expressly authorized by federal statute, (2) where cessary to aid the federal court's jurisdiction in the nding proceeding, and (3) where necessary to protect and

effectuate that judgment. However, Vesco & Co., Inc. was not a party to that action and it has not been served with process in that action. Surely the mere addition of that caption to the within matter cannot suffice to cure this essential defect.

The case law is clear that § 2283 must be strictly construed and any exceptions narrowly applied. As the Supreme Court stated in Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 297, 90 S. Ct. 1739, 26 L. Ed. 2d 234 (1970):

> "Any doubts as to the propriety of a federal injunction should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy. The explicit wording of 2283 itself implies as much and the fundamental principle of a dual system of courts leads inevitably to that conclusion."

This great reluctance by the federal courts to enlarge the three narrow exceptions to the anti-injunction statute is supplemented by the principle that once a party has commenced suit, it is only under the most extraordinary circumstances that a court in a subsequent suit will enjoin the proceeding that was prior in time. Hill v. Martin, 296 U.S. 393, 56 S. Ct. 278, 80 L. Ed. 293 (1935); American

Houses v. Schneider, 211 F. 2d 881 (3rd Cir. 1954).

In this regard, it is important to note that, contrary to the assertions of Mr. Butowsky in his affidavit filed on June 22, the suit presently before this Court was commenced subsequent to the action started in New Jersey state court by Vesco & Co., Inc. Vesco & Co., Inc. filed its suit on June 1, 1973. ICC filed its suit in federal court on June 7, 1973. The New Jersey Rules of Court are quite clear in this matter. R.4:2-2 states:

> "A civil action is commenced by filing a complaint with the Court."

In the Butowsky affidavit mentioned above, reference is made to the Vesco & Co., Inc. v. Richardson suit solely in relation to the relief sought in the Fourth Count of that complaint. It is important to note that that Count does not endeavor to challenge as such this Court's judgment, but solely ICC's consent thereto, without which the judgment may well not have been entered. But even assuming arguendo that this Court should find some authority on which to base an injunction of the relief sought in that Fourth Count, there would still be no basis on which to enjoin Vesco & Co., Inc. from proceeding on the other matters alleged in their complaint, and particularly against defendants other than ICC.

The important policy consideration in this area has been stated by the Second Circuit in Vernitron Corp. v. Benjamin, 440 F. 2d 105 (2d Cir. 1971) cert. den., 402 U.S. 987:

> "(T)o justify an injunction of a state court action, it is not sufficient to show that the matter properly before a state court embraces issues within the compass of the federal suit, even if the federal court has exclusive jurisdiction over its case (citation). There is no reason why the state court cannot or should not determine issues of fact and state law relevant thereto as they come up in state litigation."

A final critical point for consideration by this Court is that the issues and causes of action in the New Jersey suit are distinct and separate from those either presently or previously before this Court. In such a circumstance, where little or no overlap between the federal and state suit is involved, yet another reason is presented why an injunction should not be granted.

The basic reason for the third exception listed in § 2283 was to prevent relitigation in state courts of matters already determined in federal courts. Necchi Sewing Machine Sales Corp. v. Carl, 260 F. Supp. 665 (S.D.N.Y. 1966) State of Oklahoma ex rel. Wilson v. Blankenship, 447 F. 2d 687 (10th Cir. 1971), cert. den., 405 U.S. 918. No such

problem is present in the two cases involved here, for they involve essentially different parties and different issues. Moreover, there are claims in the New Jersey action, particularly with reference to the defendants, Richardson and Benjamin, which are not found in any other action and as to which there is no indication as to any prospective action by ICC.

CONCLUSION

For the reasons set forth above, and such additional matters as may be presented to the Court upon oral agreement of these motions, the complaint against Vesco & Co., Inc. should be dismissed.

Respectfully submitted,

HANNOCH, WEISMAN, STERN & BESSER

By _____
Laurence B. Orloff
A Member of the Firm

Of Counsel:
Laurence B. Orloff
James J. Shrager

On the Brief:
Gary S. Freedman

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JUN 1 1973
CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL ON FILE IN MY OFFICE. THIS NOTICE IS GIVEN IN COMPLIANCE WITH THE RULES OF COURT.
Clerk

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ATTORNEYS FOR Plaintiff

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: BERGEN COUNTY
DOCKET NO. C-
Bergen County Docket No. 73-1434

VESCO & CO., INC., a Delaware corporation,

Plaintiff,

-vs-

LAURENCE B. RICHARDSON, JR., INTERNATIONAL CONTROLS CORP., a Florida corporation, HARRY L. SEARS, MALCOLM E. McALPIN, ELMER A. STICCO, FRANK G. BEATTY, MICHAEL ROSSI, WILBERT J. SNIPES, PHILIP R. GUSTLIN, GEORGE D. GOULD, CHARLES S. DESMOND, JOHN MOSLER, ALLEN SHINN, JOSEPH L. WEINER and GARY E. BENJAMIN,

Defendants.

C-3448-72

Civil Action

COMPLAINT

Plaintiff, VESCO & CO., INC., a Delaware corporation, complaining of the defendants, says that:

Memorandum in Support of Plaintiff's Motions and in Opposition to Motions of Certain of the defendants, dated June 26, 1973.

(378a - 426a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,	:	
Plaintiff,	:	
-against-	:	73 Civ. 251f (CES)
ROBERT L. VESCO, et al.,	:	
Defendants.	:	

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTIONS AND IN OPPOSITION TO MOTIONS OF CERTAIN OF THE DEFENDANTS

Preliminary Statement

By its Final Judgment of Permanent Injunction and Appointment of Special Counsel and Directors entered in Securities and Exchange Commission v. Robert L. Vesco, et al., 72 Civ. 5001 (CES), this Court appointed Special Counsel and a new interim independent Board of Directors for plaintiff International Controls Corp. ("ICC"). The Final Judgment directed Special Counsel to conduct a full investigation into the affairs of ICC, report to this Court and the Securities and Exchange Commission (the "SEC")

and take all appropriate action, including, but not limited to the institution and prosecution of suits on behalf of ICC to recover all assets or monies improperly used, taken, wasted, misappropriated or paid to anyone without appropriate authorization of the Board of Directors of ICC, or in breach of duti owed to ICC. Special Counsel was further directed that:

> ". . . pending the investigation and accounting by the Special Counsel, he shall take immediate, necessary or appropriate action to protect International Controls' claims, interests and rights and pursue all possible claims against the defendants herein or any other persons including, but not limited to, the commencement of legal proceedings to prevent the dissipation or flight of any funds or other assets, the placing of a stop transfer order on securities beneficially owned or controlled by said defendants and/or the institution of appropriate action to freeze and preserve the assets of said defendants or others who may be obligated to Internationa Controls. . . ." (Emphasis added).

The instant action instituted on June 7, 1973 is a direct result of these directions to Special Counsel.

Upon investigation, Special Counsel found defendant Vesco and his group had engaged in an unlawful scheme involving the purchase and sale of securities to use ICC to obtain for themselves the benefit and control of I. O. S. Ltd. ("I.O.S.") and related companies, and other assets of ICC, including the stock of Fairfield General Corpora-

tion ("Fairfield General"), and its subsidiaries, Fairfield Aviation Corporation ("Fairfield Aviation") and Skyways Leasing Corporation ("Skyways"), whose sole business is the ownership and operation of a Boeing 707, Register Number N1iRV.

The principal architect of that scheme, defendant Vesco, had failed to appear to plead to a criminal indictment in New York and was a fugitive from justice, living outside of the United States to avoid the jurisdiction of the Courts. In addition, the principal asset of Fairfield General, Fairfield Aviation and Skyways, the Boeing 707, has been removed from the United States, and was under contract for sale. Once converted to cash, this asset could quickly disappear. The only other known asset of defendant Vesco that could be available to satisfy a judgment is his stockholdings in ICC and most of that has been transferred to his corporation, defendant Vesco & Co., Inc. ("Vesco & Co."). Accordingly, this action was commenced and at the time of commencement of the action a preliminary injunction was sought to preserve the status quo.

This Court has before it the following motions:

1. ICC's motion for a preliminary injunction restraining the transfer of certain assets by defendants Fairfield General, Fairfield Aviation, Skyways, Robert L. Vesco, Vesco & Co., Frank G. Beatty, Joel Grady and Alwyn Eisen-

hauer. (Order to Show Cause signed June 8, 1973).*

2. ICC's motion to preliminarily enjoin the prosecution by certain of the defendants of two actions in the State of New Jersey entitled "Fairfield General Corporation v. International Controls Corp." (N.J. Sup. Ct., Chan. Div., Essex Co.) and "Skyways Leasing Corporation v. International Controls Corp.," (N.J. Sup. Ct., Law Div., Essex Co.) (Order to Show Cause signed June 8, 1973).*

3. ICC's motion to preliminarily enjoin prosecution of the action entitled "Vesco & Co., Inc. v. Laurence B. Richardson, et al.," (N.J. Sup. Ct., Chan. Div. Bergen Co.) (Order to Show Cause signed June 22, 1973).**

4. Motion of defendant Vesco & Co. for dismissal of the Complaint for lack of subject matter jurisdiction, lack of personal jurisdiction and insufficiency of service of process. (Notice of Motion dated June 4, 1973).

5. Motion of defendant Alwyn Eisenhauer to dismiss the Complaint for lack of subject matter jurisdiction, personal jurisdiction and insufficiency of service of process. (Undated Notice of Motion)

The matters at issue on the first three motions concern chiefly the 2nd, 3rd, 4th, 5th, 6th and 7th counts of the Complaint, all of which deal with certain events and transactions relating to ICC's aviation business, Fairfield General,

*Supported by affidavits of David M. Butowsky, sworn to June 7, 1973 and June 18, 1973; Allen M. Shinn, sworn to June 6, 1973; Laurence B. Richardson, Jr., sworn to June 7, 1973; and Malcolm McAlpin, sworn to June 7, 1973.

**Supported by affidavit of David M. Butowsky, sworn to June 21, 1973.

Fairfield Aviation, Skyways Leasing and a certain Boeing 707 airplane. The other two motions attack the sufficiency of the entire complaint as it relates to defendants Vesco & Co. and Eisenhauer. This memorandum submitted on behalf of the plaintiff will first set forth the relevant facts and then present plaintiff's position with respect to each of the motions referred to above.

FACTS

The facts are set forth in the affidavits of Allen Shinn (President of ICC), sworn to June 6, 1973; Malcom McAlpin (Former Director of ICC), sworn to June 7, 1973 and Laurence B. Richardson, Jr. (Former President of ICC), sworn to June 7, 1973; David M. Butowsky (Special Counsel), sworn to June 7, 1973, June 18, 1973 and June 22, 1973. In summary, they are:

1. Plaintiff (hereinafter referred to as "ICC") is a Florida corporation which is publicly held, has a substantial number of stockholders and is listed on the American Stock Exchange (Shinn par.5). Defendant Robert L. Vesco was an officer, director and the controlling stockholder of ICC holding approximately 25% of ICC's stock (Shinn par. 4). Prior to January 1, 1971, plaintiff's business consisted in part of the ownership and operation of a wholly-owned subsidiary referred to hereinafter as "Fairfield Aviation," a

New Jersey corporation. Fairfield Aviation in turn wholly owned a New Jersey corporation, Skyways Leasing Corporation (Shinn pars. 6, 7).

2. The Complaint alleges that sometime during 1971 defendant Robert L. Vesco formulated a plan by which he would cause ICC to acquire and pay the expenses for a Boeing 707 airplane which would be used as his personal transportation vehicle, for personal pleasure and for business largely unrelated to the business of ICC, and pursuant to that plan would cause ICC to transfer said airplane, together with other assets of substantial value, to a corporation controlled and dominated by him, thereby permitting him to have all the enjoyment of ownership of the airplane at the expense of ICC (Comp. pars. 6, 21). Defendants Grady, Beatty, Clay and Dodd, who were all officer-director fiduciaries of ICC and/or its wholly-owned subsidiaries (Fairfield General, Fairfield Aviation and Skyways Leasing), joined with defendant Robert Vesco in formulating and carrying out that plan (Comp. par 7; Shinn par. 8). Beatty was and is the chief executive officer of defendant Fairfield General; Grady the chief executive officer of defendant Skyways Leasing (Comp. par. 8)

3. Pursuant to that plan, the following steps were taken:

(a) On December 23, 1970, Vesco caused ICC to

contribute to Skyways certain aircraft assets (not the Boeing 707) having an aggregate market value of $363,000 (Comp par. 22).

(b) On June 15, 1971, Vesco caused Skyways to purchase the Boeing 707 from Pan American Airways for $1,375,000, of which $343,750 was paid with funds contributed to Skyways by ICC and the balance owed to the seller in twenty quarterly installments (Shinn par. 10).

(c) Between June 1971 and December 8, 1971, Vesco caused ICC to advance approximately $1,000,000 toward the cost of acquiring the Boeing 707 and the refurbishment and improvement of that plane (Shinn par. 14). During the three months ended September 30, 1971, Skyways leased the plane to ICC at a total cost of $139,000. By lease dated as of October 1, 1971, ICC agreed to lease the plane from Skyways for a period of five years at an approximate gross rental of $3,500,000, the larger portions of which were to be paid as monthly rental during the first two years of the lease ($100,000 a month for the first three months, $83,000 per month for the next twelve months). Under the terms of the lease (i) ICC was responsible for service, maintenance, overhaul scheduling and personnel; (ii) Skyways had the absolute right to terminate the

lease any time it wished to sell or transfer ownership of the plane; and (iii) all improvements to the plane paid for by ICC became the property of Skyways. (Shinn par. 11(a); Ex. B to Shinn Affid., Articles V and VIII).

(d) The "refurbishing" of the airplane was such as to make it suitable only as an entertainment and transportation center for Mr. Vesco personally. Its seating capacity was reduced from 150 passengers to approximately 33; entertainment facilities such as a discotheque, dance floor, hi-fi stereo, sauna and other amenities were installed (Shinn par. 13).

(e) In November 1971, as part of the aforesaid plan, defendant Vesco caused still another corporation to be organized. This corporation was Fairfield General. It had no assets. At an ICC Board of Directors meeting held December 8, 1971, the ICC Board of Directors adopted resolutions purporting to accomplish the following (Ex. E to Shinn Affid.):

(i) Transfer of all of the stock of Fairfield Aviation owned by ICC to the newly organized Fairfield General, thereby divesting ICC of its control over Fairfield Aviation, its aviation business, Skyways Leasing and the Boeing 707. This transfer

was made in exchange for stock of the newly organized Fairfield General.

(ii) Declare a purported dividend by ICC to its own stockholders (of which Robert L. Vesco personally owned 25%) of the stock of Fairfield General. This "dividend" was accompanied by a 1933 Act registration and prospectus which accomplished an instantaneous "spin-off" launching Fairfield General as a separately publicly held and traded corporation. (Ex. A to Shinn Affid.).

As a result of the foregoing steps, a new corporate complex was created wholly apart from ICC in which all of the Fairfield Aviation assets, including the Boeing 707, were held. The said complex was controlled by Vesco through his 25% ownership of its stock and the installation of a Board of Directors of his choosing prior to the spin-off, consisting of his co-conspirator defendants, Grady, Clay, Dodd and Beatty. This new corporate complex was now the beneficiary of the funds expended by ICC for the acquisition and improvement of the Boeing 707 and was the lessor under an onerous lease, a lease under which ICC had spent and would spend hundreds of thousands of dollars as escalated rentals during the early months to pay for the improvements to the Boeing 707, but which provided that

if the plane were sold or transferred, ICC's rights as lessee could be terminated on five days notice and it would lose the "benefits" of the later and cheaper portions of the rental period and would forfeit all of the expenditures it had made for improvements.

(f) Two former directors (including one present at the December 8, 1971 meeting) have given sworn statements in this Court that their consent to the aforesaid exchange and "dividend" was secured by misstatements of fact and omissions of material statements of facts. (See McAlpin Affid. June 7, 1973; Richardson Affid. June 7, 1973). Principal among these are:

(i) They were not told the truth about the amount spent on refurbishing the plane, or about the sumptuous nature and extent of the renovations.

(ii) They were not told the onerous terms of the lease to Skyways.

(iii) They were told that the plane would be used and paid for by I.O.S. and would not be an expense to ICC, or used by Mr. Vesco for his personal transportation.

(g) At the time of the distribution of the Fairfield General shares as a dividend to the stockholders, there was issued and delivered a 1933 Act prospectus (Ex. A. to

Shinn Affid.). This prospectus contained a number of false and misleading statements, among which were the following:

(i) It stated that the cost of refurbishing the plane was $350,000. In fact, it cost more than $600,000. (Shinn par. 13).

(ii) It concealed the fact that the improvements to the Boeing 707 were designed to the satisfaction and personal taste of Robert L. Vesco, would in effect transform the plane into a pleasure palace for him and render it thereafter commercially useless. (Shinn par. 13).

(iii) It failed to disclose that the $1,000,000 spent in the acquisition and refurbishing of the plane had been expended without authorization of the Board of Directors (Shinn par. 14) until the purported "ratification" of December 8, 1971 when it was a fait accompli.

(iv) It failed to set forth the termination and modification provisions of the lease with Skyways referred to above. (Shinn par. 17).

(v) It dishonestly stated that the purpose of the dividend was because "the General Aviation business did not fit into the operations of any of the reconstituted subsidiaries [of ICC]." (Ex. A to Shinn

Affid. at p. 4) when the real reason was to place the aviation assets under the absolute control of defendant Robert L. Vesco so that he could have the Boeing 707 for his personal use.

(h) The dividend of Fairfield General shares resulted in a spin-off of much more than $1,000,000 of ICC's former assets without putting any true value into the hands of the stockholders who received it (other than Vesco). The stock itself had little inherent value. The principal business of the corporation was its lease with ICC and the principal use of the plane was to fly Vesco from place to place in luxury. The stock had an insubstantial market value and, unlike ICC stock, the stock of Fairfield General was not listed on any exchange (Shinn par. 21).

(i) During 1971 and 1972 (and, indeed, up to this very date), the Boeing 707 was used by Robert L. Vesco and members of his family for trips to different places around the world. Most of the destinations are serviced by commercial airlines. The 707 is too large to land in small airports not so serviced. First-class tickets on commercial aircraft for the same trips would have cost ICC approximately $220,000. Instead, ICC expended approximately $2,300,000 for the Boeing 707 in 1972 alone. (Shinn par. 12).

4. In July 1972 (a time when he was under intensive SEC investigation), Robert Vesco caused to be created a Delaware corporation, defendant Vesco & Co., and contributed 800,000 shares of ICC common stock to said corporation. The basic activity of Vesco & Co. consists of the ownership of Vesco's ICC stock. Robert Vesco is the owner of the preferred shares of Vesco & Co., his wife, Patricia J. Vesco, as custodian for their children, is the owner of all of the voting and non-voting common stock of the company (Affid. of Stern June 12, 1973; Affid. of Butowsky June 18, 1973).

5. In November 1972, the Securities and Exchange Commission instituted the action entitled SEC v. Robert L. Vesco, et al., 72 Civ. 5001 (CES). In that proceeding, application was made to have a receiver appointed for ICC. The said application, as well as the claim by the SEC against ICC, was resolved by a Final Judgment of Permanent Injunction and Appointment of Special Counsel and Directors dated March 16, 1973. It, in turn, was followed by an Order of this Court dated March 25, 1973 naming George D. Gould, Charles S. Desmond, John Mosler, Allen M. Shinn and Joseph Weiner as interim directors and David M. Butowsky as Special Counsel.

6. Defendant Alwyn Eisenhauer is the principal pilot of the 707 and the personal pilot of Robert Vesco (Comp. par. 8).

On March 7, 1973, plaintiff ICC had entered into an agreement with defendant Eisenhauer pursuant to which defendant Eisenhauer agreed to fly the Boeing 707 at ICC's request for all flights which ICC deemed necessary while the Boeing 707 is leased to and under the control of ICC. Pursuant thereto, plaintiff ICC instructed defendant Eisenhauer to fly the Boeing 707 to Newark and paid defendant Eisenhauer expense money to do so. Defendants Grady and Beatty wrongfully instructed defendant Eisenhauer to fly the Boeing 707 to Beirut and thence to Nassau and thence to Beirut, and defendant Eisenhauer complied. This was done secretly and without prior notice to ICC despite the fact that negotiations were then being conducted between defendants Grady, Beatty and counsel to ICC (Shinn par. 23). As stated by defendant Eisenhauer, the pilot of the Boeing 707, in his letter to the SEC, the Boeing 707 has been kept out of the United States since that date and has been continuously used by Vesco and other defendants herein. (Shinn par. 23)

7. Defendants Beatty and Grady have informed counsel to ICC that Skyways was attempting to sell the Boeing 707. Attempts to sell the Boeing 707 have continued to the present time. (Shinn par. 24)

8. (a) In February 1973, at the demand of the SEC, this Court enjoined ICC from making any further payments pursuant to the lease with Skyways covering the Boeing 707 and no such p

ments were thereafter made (Shinn par. 22).

(b) The Final Judgment of March 16, 1973 prohibited ICC from holding any annual meeting of stockholders without the consent of the SEC until its proxy material, including accompanying financial information, is found by the SEC to be in accordance with the Securities Exchange Act of 1934.

9. Fairfield General, Fairfield Aviation and Skyways continue to be dominated and controlled by Robert L. Vesco and the directors selected by him, said defendants Beatty, Clay, Dodd and Grady (Shinn par. 23).

10. (a) On or about May 25, 1973, Fairfield General, Fairfield Aviation and Skyways commenced an action against ICC seeking to enforce certain air taxi and management agreements made between those companies and ICC at a time when said companies were wholly owned subsidiaries of ICC and as part of the alleged plan and conspiracy of Robert L. Vesco as set forth above (Ex. B to Affid. of Butowsky June 7, 1973).

(b) On June 5, 1973, Skyways caused an action to be brought in a New Jersey state court seeking to recover over $2,000,000 from ICC claimed to be due under

the Boeing 707 lease (Ex. A to Butowsky Affid. June 7, 1973).

(c) On June 7, 1973, Vesco & Co. brought a stockholders' action in a New Jersey state court seeking to have the Court appointed Board of Directors removed and an election of directors held and also asserting derivative claims on ICC's behalf against certain of ICC's former directors (Ex. A to Butowsky Affid. June 22, 1973).

SUMMARY OF PLAINTIFF'S POSITION

1. Plaintiff is entitled to a preliminary injunction against Fairfield General, Fairfield Aviation, Skyways and Vesco & Co., Inc. enjoining them pendente lite from transferring certain assets.

It is plaintiff's position (See Point I) that (i) a prima facie showing of merit has been made, (ii) irreparable injury is threatened to plaintiff by the possibility of transfer of said assets, and (iii) the defendants can make no showing of any comparable injury by the granting of the injunction.

2. Plaintiff is entitled to a preliminary injunction enjoining the prosecution of the actions by Skyways and Fairfield General in the state courts of New Jersey. Such an injunction is permitted by 28 U.S.C. §2283.

In support of its position on this question, plaintiff will show (See Point II) that the state court actions sought to be enjoined constitute the continuation and effectuation of the wrongs alleged in the complaint. An Order of this Court restraining such litigation is, therefore, "expressly authorized" within the meaning of 28 U.S.C. §2283. Moreover, it will be shown that the New Jersey litigation tends to embarrass and frustrate the exercise by this Court of its ex-

clusive jurisdiction to enforce the Securities Exchange Act of 1934 (the "34 Act"). An injunction would, therefore, be "in aid of" this Court's jurisdiction as prescribed in 28 U.S.C. §2283.

3. Plaintiff is entitled to a preliminary injunctio enjoining pendente lite the prosecution of the action in the state courts of New Jersey by Vesco & Co.

In support of plaintiff's position on this issue, i will be shown (See Point III) that since the Vesco & Co. New Jersey action is a direct attack on this Court's judgment in SEC v. Vesco, et al., an injunction against the continuance of such state court proceedings is necessary to "protect or effec ate" said judgment.

4. The motion of Vesco & Co. to dismiss for lack of subject matter jurisdiction, lack of personal jurisdiction or insufficiency of process should be denied.

In support of plaintiff's position on this motion, plaintiff will show (See Point IV) that the Complaint in alle ing that Vesco transferred assets to Vesco & Co. properly sta a federal claim against that corporation. Further, it will b shown that Vesco & Co. is a corporate alter ego for defendant Robert L. Vesco, created by him during the perpetuation of th

fraud charged in the complaint, and into which he has placed his stock of ICC, which may be the only property from which this Court's judgment against him may be satisfied. In the light of the fact that Mr. Vesco has fled the United States and is a fugitive from justice, this Court's powers to enforce the Securities Exchange Act of 1934 extend to reaching a corporate creature controlled by him in which his assets may be found.

5. The motion of defendant Alwyn Eisenhauer to dismiss the complaint for lack of subject matter jurisdiction, personal jurisdiction and insufficiency of process should be denied.

In support of its position that said motion should be denied, plaintiff will show (Point V) that the complaint charges Mr. Eisenhauer with aiding and abetting all of the violations alleged therein and, therefore, states a claim under the Federal Securities Laws against him. Further, it has been shown that Alwyn Eisenhauer took an active role in helping the other defendants secure the principal benefit from their illegal acts by removing the Boeing 707 from the United States. This Court, therefore, has jurisdiction over Mr. Eisenhauer.

POINT I

PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION AGAINST DEFENDANTS FAIRFIELD GENERAL, FAIRFIELD AVIATION, SKYWAYS LEASING AND VESCO & CO., INC. RESTRAINING THE TRANSFER BY THEM OF CERTAIN ASSETS

A. Showing of Merit

The facts hereinabove summarized in the statement of facts and the further facts set forth in the affidavits of Messrs. Shinn, McAlpin, Richardson and Butowsky clearly establish a meritorious claim. The gravamen of the complaint is that defendants Vesco, Beatty, Grady, Dodd and Clay contrived, through the use of the corporate defendants Fairfield General and its subsidiaries, to cheat ICC by first arranging for the acquisition of the Boeing 707, the refurbishing of it and the lease between ICC and Skyways, all at ICC's expense and on onerous terms to ICC. This was all done while Fairfield Aviation and Skyways were ICC's wholly-owned subsidiaries. They arranged for ICC to transfer its ownership to Fairfield General, a corporation theretofore without assets which would be "spun-off". Vesco would be the totally dominant stockholder and the Board of Directors would be defendants Beatty, Grady, Clay and Dodd. As a consequence of th transaction, all of the advantages given to Skyways in the form of ICC's expenditures for the plane and by the terms o

the lease devolved upon an independent economic entity controlled by Vesco and were lost to ICC.

Thus, as a consequence of the transaction, ICC had expended more than $1.5 million in respect of an airplane which was no longer its property and which it never needed in the first place. Moreover, ICC was bound to an onerous lease which might have been innocuous when the lessor was its wholly-owned subsidiary but which became lethal after that subsidiary was spun-off. Finally, the sole purpose of the lease and of the plane was to provide luxurious private transportation for Mr. Vesco and his associates in circumstances wholly unsuited for their corporate responsibilities to ICC.

The very concept of a corporate Boeing 707 for Fairfield General, its subsidiaries or its parent, ICC, was extraordinary. ICC was a small company with no business need for the Boeing 707 and there was no plan to operate the Boeing 707 commercially. As shown in Exhibit C to the Shinn Affidavit, the cost to ICC for first-class airfare on commercial airlines for all passengers transported on the Boeing 707 during 1972 would have been approximately $220,000 instead of the more than $2,300,000 actually spent that year by ICC on the Boeing 707.

The refurbishment of the Boeing 707 was spectacular-

ly wasteful. The Fairfield Prospectus stated that the cost was limited to $350,000. In fact, it cost more than $600,000. The nature of the refurbishment was not disclosed to the shareholders or the Board of Directors of ICC. It is not surprising that these facts were concealed. They were embarrassing. The Boeing 707 was rendered commercially useless by decreasing its capacity to 33 seats, adding a discotheque, dance floor, a bar and "entertainment center" (including a stereo receiver, tape deck, rhythmic lighting, a wine rack, movie screen and projector), a master bedroom and sauna and soaking bath and shower facility.

The arrangements between ICC and Skyways were extraordinary. ICC had no legitimate business purpose of spending more than $1,000,000 on the Boeing 707 or committing to a five-year lease with rental payments aggregating more than $3,500,000. Yet this was the fait accompli purportedly presented by defendant Vesco to the Board of Directors of ICC at the 82nd meeting on December 8, 1971 for belated ratification. Undisclosed to either the shareholders or the Board were material terms of the lease providing that it could be terminated by Skyways in the event of sale or transfer of ownership of the Boeing 707 on five days' notice and that any additions or improvements become the property of Skyways

The affidavits of Malcom McAlpin and Laurence B. Richardson, Jr., both sworn to June 7, 1973, state that the be-

lated ratification of the lease was obtained by defendant Vesco only by concealing the true facts with respect to the refurbishment and these material terms of the lease.

The Fairfield Prospectus gives as the reason for the dividend in kind that Fairfield General's business did not fit into the operations of ICC as reconstituted. However, the businesses of ICC, as set forth in the Shinn Affidavit, included manufacturing and service businesses and such diverse products as actuators, microwave equipment, bomb and missile casings, commercial trailers, aircraft arresting gear, government publications, waste disposal systems and aircraft components. Few, if any of these businesses, fit with any other part. It was obviously dishonest to state that ICC was making the dividend because the general aviation business did not fit with other businesses of ICC.

The stated purpose of the dividend in kind was designed to conceal its true nature and purpose. The shares of stock of Fairfield General did not represent an interest in a commercial venture, and the dividend in kind placed nearly worthless pieces of paper in the hands of the shareholders of ICC. The real value of the dividend in kind went to defendant Vesco. He thereby obtained (and still has) total control of the plane—a personally-designed flying pleasure palace.

There is also no question but that the wrongdoing was accomplished by a transaction in securities within the meaning of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. That transaction was the exchange of shares between ICC and defendant Fairfield General in which ICC parted with its stock in Fairfield Aviation (and with it the stock and assets of Skyways) and received in turn from Fairfield General stock in Fairfield General. This exchange was authorized and entered into as part of a single transaction in which it was contemplated that the Fairfield General securities would be spun-off as a dividend through ICC stockholders to the public with the use of a 1933 Act prospectus.

Under the authorities, the words "purchase" or "sale" in Section 10(b) and Rule 10b-5 are not limited to conventional cash purchases or sales of securities. In Fidelis Corporation v. Litton Industries, Inc., 293 F. Supp. 164 (S.D.N.Y. 1968), the Court reviewed the statutes as follows:

> "Sections 3(a)(13) and 3(a)(14) of the 1934 Act, 15 U.S.C. §78c(a)(13) and §78c(a)(14), define the term 'purchase' to 'include any contract to buy, purchase, or otherwise acquire' and the term 'sale' to 'include any contract to sell or otherwise dispose of'.
>
> * * *
>
> "This broad language indicates a Congressional intent not to limit 'purchase' and 'sale' to traditional face-to-face commercial transactions. Dasho v. Susquehanna Corp., 380 F. 2d

262 (7th Cir.), cert. denied sub nom. Bard v. Dasho, 389 U.S. 977, 88 S.Ct. 480, 19 L.Ed. 2d 470 (1967); United States v. Robertson, 181 F. Supp. 158 (S.D.N.Y. 1959)." (293 F.Supp. at 169)

Dasho v. Susquehanna Corporation, 380 F.2d 262 (2d Cir. 1967), involved an exchange of shares which the court held to be a transaction covered by the 1934 Act. It stated:

"Our attention is called to Sections 3(a)(13) and 3(a)(14) of the Exchange Act, 15 U.S.C. §78c(a)(13) and §78c(a)(14), which define the word 'purchase' to 'include any contract to buy, purchase, or otherwise acquire', and 'sale' to 'include any contract to sell or otherwise dispose of'. This broad language indicates an intention by Congress that the words 'purchase' and 'sale' are not limited to transactions ordinarily governed by the commercial law of sales. The purpose is evidently to make control of securities transactions reasonably complete and effective to accomplish the purposes of the legislation.

* * *

"We are of the opinion that an acquisition or disposition of securities in exchange for other securities falls within the statutory definitions and that this reasoning applies to a case of merger...."

See also: Vine v. Beneficial Finance Co., 374 F. 2d 627 (2d Cir. 1967) (forced "sale" by non-consenting stockholder to statutory merger); Coffee v. Permian Corporation, 434 F. 2d 383 (5th Cir. 1970) (partial liquidation).

The Dasho case was cited with approval by the United States Supreme Court in SEC v. National Securities, Inc., 393 U.S. 453 (1969) in which the Court expressed the following

statement of policy concerning the interpretation of Rule 10b-5:

> "The broad antifraud purposes of the statute and the rule would clearly be furthered by their application to this type of situation."

This Court should have little hesitation to applying the principles set forth in the foregoing authorities to th facts in the instant case.

The moving parties here argue that no violation of the Exchange Act is alleged against them. That is simply not correct. The complaint alleges they were major participant in the scheme. Fairfield General and its subsidiaries were the very instruments by which ICC was looted of assets; the participated in the looting. Defendant Fairfield General, corporation whose Board of Directors consisted of defendant Grady, Clay, Dodd and Beatty, received, and still holds, t very assets lost by ICC in the wrongful transaction, vix, stock of Fairfield Aviation and through it the stock of Sk ways Leasing. Defendants Fairfield Aviation and Skyways L ing are mere corporate conduits through which Fairfield Ge eral holds these assets. They are necessary parties in or for this Court to afford relief against Fairfield General. At this very time, Fairfield General, Fairfield Aviation a Skyways Leasing are seeking in the state courts of New Jer to enforce the onerous leases and agreements imposed upon ICC as part of the illegal plan.

The record is replete with evidence of misrepresentations and omissions to state material facts in connection with the transaction. Important information concerning the terms of the lease and the amount of the expenditures in refurbishing the plane and the purpose for which the plane was to be used were even kept from directors of ICC. This, in and of itself, constitutes a basis for the claim under Rule 10b 5. Ruckle v. Roto American, 339 F. 2d 24 (2d Cir. 1964).

B. Showing of Threatened Irreparable Injury

The facts were known to the management of defendants Fairfield General and its subsidiaries at the time of the wrongful acts including the exchange of shares and the dividend spin-off. These same persons still control Fairfield General, Fairfield Aviation and Skyways Leasing and direct their policies. To the extent that innocent interests may have intervened through the public trading of the stock of Fairfield General, these interests, we believe, should be subjected to the burdens of Fairfield General's prior liabilities to ICC and its stockholders. However, this Court will have ample time and opportunity to sort out as between the different interests, the rights and liabilities of the parties. The most important thing that must be accomplished and which is sought to be accomplished by this litigation

is that the rights of ICC in respect of these properties be established and that the onerous expenditures and contractual instruments, which were made and entered into at a time when the aviation subsidiaries were wholly-owned by ICC, be readjusted on a fair and equitable basis by the accounting demanded in the instant complaint. If this is to be done, the assets involved, viz, the stock of Fairfield Aviation held by Fairfield General and the assets of Fairfield Aviation including the stock of Skyways Leasing and the Boeing 707 must be preserved pendente lite and Mr. Vesco's stock in ICC must be kept available for satisfaction of the injuries suffered by any of the parties hereto as a result of his frauds.

Unless this Court acts to freeze these assets pendente lite, there may be nothing for any of the injured parties, even the stockholders of the corporate defendants. The Boeing 707 has already been removed from the jurisdiction. Unless defendants are enjoined, it could be sold or transferred by Skyways Leasing and the proceeds received in a foreign country and turned over to other foreign entities controlled by the individual defendants. Any judgment or recovery received by ICC in this action would be rendered meaningless. The threat of irreparable injury is, we submit, obvious.

C. Relative Hardship

In considering "relative hardship", it should be borne in mind that the Prospectus of Fairfield General shows that Fairfield General and its subsidiaries have no assets or business except those received from ICC. They are not and never were meaningful business entities whose day-to-day affairs would be interrupted by the injunction sought. They are merely corporate depositories of the proceeds of the wrong done to ICC.

Vesco & Co. is a corporation created by Mr. Vesco in July 1972 during the perpetuation of the fraud set forth above. It is owned by him, his wife and their children. It is supposedly managed and controlled by his wife and his secretary. Vesco has deposited into this shell virtually all of his shares of ICC. This may be the only property of his available to persons injured by his various depredations. Mr. Vesco is himself presently a fugitive from justice who has fled this country. We submit the powers of this Court to grant relief for violations of the 1934 Act extend to reach corporate creatures of this kind in circumstances as egregious as those set forth in the instant case. See discussion of SEC v. Manor Nursing Ctrs., Inc., 458 F. 2d 1082 (2nd Cir. 1972) in POINT IV.

POINT II

PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION AGAINST THE CONTINUED PROSECUTION OF THE LITIGATION INSTITUTED BY SKYWAYS LEASING AND FAIRFIELD GENERAL

Under 28 U.S.C. §2283, a federal court may not grant an injunction against the prosecution of state court proceedings "...except as expressly authorized by an Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

In the instant case, the authority of this Court to issue the injunctions against the prosecution of the proceedings by Skyways and Fairfield General comes within the exceptions set forth above in §2283.

It has been held that a district court in exercising its exclusive jurisdiction to enforce the 1934 Act and to stop the continuation of frauds or violations perpetuated thereunder, had the power to enjoin state court proceeding where the said state court proceedings were in effect part of the continuation or implementation of the violation of the 1934 Act.

In Studebaker Corp. v. Gittlin, 360 F. 2d 692 (2d Cir. 1966), the Court held that the district court had power to enjoin proceedings being prosecuted by Gittlin in a state court to secure a stockholders list where said pro

ceedings were being conducted by Gittlin on authorization from stockholders secured by him in alleged violation of the proxy rules under the 1934 Act. The Court held that under the 1934 Act the Court was "expressly authorized" to enjoin a violation of the proxy rules and since the state court proceeding was being conducted by Gittlin with authorizations secured in violation of those rules, enjoining the continuation of the violation required the enjoining of the prosecution of state court proceedings. The analogy to the instant case is immediately identifiable.

In the instant case, defendants Fairfield General, Fairfield Aviation and Skyways Leasing, while wholly-owned subsidiaries of ICC, secured rights against ICC by engaging in practices in violation of the Securities Act of 1934 which they are now seeking to assert in state court proceedings against ICC.

As stated earlier in this brief, the improper purpose of the exchange of stock and spin-off dividend was to encumber ICC with the disadvantages of certain agreements at a time when it no longer held ownership and control of the companies with which it made said agreements. This purpose was effectuated by the exchange and spin-off in violation of the 1934 Act.

To permit the Fairfield companies to enforce these agreements - and especially the lease covering the Boeing

707 - would be in effect to permit the said defendants to continue to effectuate and reap the fruits of the violations of the 1934 Act. Since it was by said violation of the 1934 Act that they acquired independent rights under said agreements, by enforcing said agreements they would reap the gains intended by the said violation. This is immediately comparable to the situation in Studebaker v. Gittlin in which the illegally secured authorizations provided the means to prosecute the state court stockholders' list litigation which the federal court enjoined.

Under the decision of the Second Circuit in the Studebaker Corp. v. Gittlin case, this Court has the power to enjoin the New Jersey proceedings and, we submit, it should exercise that power.

Moreover, this Court's injunction of the two New Jersey proceedings is necessary in aid of its "jurisdiction" in the instant case. Under Section 27 of the Securities Exchange Act, this Court has exclusive jurisdiction over violations of said Act. It is well settled that no state court may make an adjudication of rights and liabilities under said Act whether by way of the complaint defenses or counterclaims. Reuben Rose & Co., Inc. v. Davon Associates, Ltd., 67-69 C.C.H. Fed. Securities Rep. Dec. ¶92,109, (N.Y.Co. 1967); Schnall v. Loeb, Rhoades & Co., 70-71 Fed. Securities Rep. Dec. ¶93,104 (N.Y.Co. 1971).

The exclusive jurisdiction provision of the 1934 Act puts plaintiff in an impossible position in the state court where its 1934 Act defenses to enforcement of the Skyways lease and the agreements with Fairfield Aviation will not even be cognizable. The New Jersey court will only be interested in enforcing the leases and the agreements in accordance with their terms. It has no power to invoke the 1934 Act in order to relieve ICC of its liability under the agreements. ICC would, therefore, be exposed to a possible judgment, the leases and other agreements would be enforced and in effect defendants would reap the very spoils of their violation of federal laws.

On the other hand, if this Court enjoins defendants from prosecuting said proceedings pendente lite, there is nothing to prevent said defendants from bringing their claims on said leases and agreements into this Court as counterclaims and if, for any reason, ICC's position is not sustained under the 1934 Act, Fairfield Aviation and Skyways would be entitled to whatever relief is indicated. The balance of possible hardship clearly weighs in favor of granting the injunction.

POINT III

PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION AGAINST THE CONTINUED PROSECUTION BY VESCO & CO., INC. OF LITIGATION IN THE STATE OF NEW JERSEY SEEKING TO COLLATERALLY ATTACK AND INVALIDATE THIS COURT'S JUDGMENT AND ORDER IN SEC v. VESCO, ET AL. (72 CIV. 5001)

On June 7, 1973, the instant action was commenced in this Court seeking inter alia relief against Vesco & Co., Inc. This action was taken by ICC's Court appointed Board of Directors and Special Counsel pursuant to powers conferred upon it by this Court's judgment in SEC v. Vesco, et al. (72 Civ. 5001). On June 15, 1973, ICC was served with process in an action in the Superior Court of the State of New Jersey, Chancery Division, Bergen County in an action by Vesco & Co., Inc. against ICC, its present Court appointed directors, and certain former members of the Board of Directors.

It will be recalled that Vesco & Co., Inc. is the company into which Robert L. Vesco transferred his stock of ICC in July 1972. It is a company beneficially owned by Mr. Vesco, his wife and his children. As holder of the Robert L. Vesco shares (at least nominally), Vesco & Co., Inc. claims to be a stockholder of ICC and its action in New Jersey is brought in that capacity and is a derivative action brought in the right of ICC. The complaint in the New Jersey action contains four counts. The Fourth Count seeks

to oust the present Court appointed Board of Directors claiming that their appointment was "contrary to the requirements of corporate law statutes" and "contrary to the best interests of ICC." The action asks the New Jersey Court for an injunction enjoining the present directors from exercising or purporting to exercise any of the duties or prerogatives of directors of ICC. It asks the Courts of New Jersey to order a meeting of shareholders to elect a board of directors.

The foregoing is a direct attack on this Court's judgment. It, in effect, asks the Courts of New Jersey to invalidate and repeal this Court's judgment. In exercise of this Court's paramount authority under the 1934 Act and at the behest of the SEC acting pursuant to the same statute, this Court appointed Special Counsel and an interim Board of Directors and expressly forbade the holding of a meeting of stockholders for the election of a new board of directors until the SEC had consented to the holding of such a meeting and cleared proxy material in accordance with the Securities Exchange Act of 1934. Thus, Vesco & Co., Inc.'s New Jersey action if it were to succeed would violate the express provisions of this Court's judgment.

The obvious purpose of the New Jersey action in this respect is to unseat the present Board of Directors and

thereby abort this action and restore to Mr. Vesco control of ICC.

The other counts in the Vesco & Co., Inc. complaint in the Superior Court of New Jersey are derivative counts seeking damages against directors and former directors of ICC. The prosecution of a stockholders' derivative action in the State of New Jersey asserting ICC's rights against former directors for breach of fiduciary duty would directly conflict with the carrying out by the Special Counsel and by ICC's new Board of Directors of the duties and responsibilities imposed upon them by this Court's Final Judgment and Order in SEC v. Vesco, et al. (72 Civ. 5001). In such Judgment and Order, this Court, in lieu of appointing a receiver, entrusted to Special Counsel and the new Board of Directors the task of investigating all possible claims by ICC against former directors for breach of fiduciary duty and the enforcement of ICC's rights with respect thereto.* It would be totally contrary to the spirit and purpose of this Court's Judgment in SEC v. Vesco, et al. to permit Mr. Vesco or his corporation to assert the rights of ICC in litigation in the courts of the State of New Jersey, particularly when the very purpose of said litigation is to

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*It is noteworthy that none of the derivative damage counts in the Vesco & Co., Inc. action contains the required allegation of a demand on ICC's Board of Directors and their refusal.

collaterally attack this Court's Judgment and Order. This Court, therefore, in order to protect ICC's rights in the said action and its power to enter a meaningful judgment in said action, as well as to protect the integrity of its Judgment in the SEC v. Vesco, et al. action (72 Civ. 5001), should enjoin Vesco & Co., Inc. from further prosecution of the action in the State of New Jersey.

Under 28 U.S.C. §2283, a United States District Court is permitted to enjoin state court proceedings when such an injunction is "necessary in aid of its jurisdiction, or to protect and effectuate its Judgments."

We respectfully submit that no clearer case could be presented than that presently before the Court. If Vesco & Co., Inc. seeks to challenge the validity of this Court's Judgment and Order, it has ample opportunity to do so in this Court. Thus, it could apply either in the SEC action or in the instant case for a vacatur of or relief from said Judgment. While we have no doubt that this Court's Judgment appointing Special Counsel and Interim Board of Directors was a correct exercise of powers conferred on the Court (and upon the Securities and Exchange Commission) by the 1934 Act, we do not believe that such question is at issue on the present motion. What is at issue is whether Vesco & Co., Inc. has the right to collaterally attack that Judgment in

the state courts of New Jersey and to embarrass or prejudice said Judgment by such attacks.

We believe it does not and we submit that Section 2283 of the Judicial Code authorizes this Court to stop it from doing so.

POINT IV

THE COMPLAINT PROPERLY STATES A CLAIM UNDER THE FEDERAL SECURITIES LAWS AGAINST VESCO & CO.

Vesco was the architect of the scheme alleged in the complaint, a scheme by which Vesco and others obtained for themselves, at ICC's expense, control of I.O.S. and its assets as well as assets of ICC. The transactions effected by him in carrying out the scheme continued up through June of 1972.

In July of 1972, according to the moving affidavit of Milton H. Stern, Vesco & Co. was formed and shortly thereafter Vesco exchanged 800,000 shares of ICC stock for 2,513 shares of preferred stock of Vesco & Co. The only known asset of defendant Vesco available to satisfy a judgment herein is Vesco's stock in ICC now held by his nominee Vesco & Co.

The specifics of the exchange of 800,000 shares of ICC stock for Vesco & Co. preferred stock are not set forth in the complaint in that they were not known when the complaint was drafted. Rather, the complaint alleges all that was known when the complaint was drafted, i.e., that Vesco and members of his family transferred certain of their assets to Vesco & Co.

For the purpose of Vesco & Co.'s motion to dismiss, the allegations of the complaint must be liberally construed and are deemed admitted. Caserta v. Home Lines Agency, Inc., 154 F. Supp. 356 (S.D.N.Y. 1957). Gold v. Macy, 234 F. Supp. 764 (E.D.N.Y. 1964). The substantive merits of the claim, however doubtful, are not a subject for determination. Abdelnour v. Coggeshall & Hicks, 287 F. Supp. 135 (S.D.N.Y. 1968). As the Supreme Court stated in Jenkins v. McKeithen, 395 U.S. 411 (1968) reh. den. 396 U.S. 869:

> "For the purposes of a motion to dismiss, the material allegations of the complaint are taken as admitted. See, e.g., Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp., 382 U.S. 172, 174-175 (1965). And, the complaint is to be liberally construed in favor of plaintiff. See Fed. Rule Civ. Proc. 8(f); Conley v. Gibson, 355 U.S. 41 (1957). The complaint should not be dismissed unless it appears that appellant could 'prove no set of facts in support of his claim which would entitle him to relief.' Conley v. Gibson, supra, at 45-46." (395 U.S. at 421-22).

Here the complaint alleges that Vesco transferred assets to Vesco & Co. This, when coupled with the remaining allegations against Vesco, can be construed as an allegation that Vesco & Co. was created by Vesco during the course of and as part of the entire scheme and was, therefore, nothing more than a corporate alter ego of Vesco used in perpetrat-

ing the fraud. Such an allegation states a claim under the Federal securities laws against Vesco. SEC v. Manor Nursing Ctrs., Inc., 458 F. 2d 1082 (2d Cir. 1972).

In Manor Nursing, Manor Nursing Center, Inc., one of the primary defendants and wrongdoers, had, as has Vesco in the instant case, transferred assets to a separate corporate entity. Also, as in the instant case, this transfer of assets occurred after the effectuation of the specific transactions and acts which were alleged to have been in violation of the Federal securities laws. Indeed, a reading of Manor Nursing shows that the only involvement of Capital Cities Nursing Center, Inc. ("Capital"), the transferee, was that it was the transferee. Despite this limited involvement, the court held that the knowledge of the individual defendant who controlled Capital should be imputed to it.

In addition, with one exception not relevant here, the court held that the ancillary relief granted by the District Court was a proper and necessary exercise of its equity powers. This ancillary relief included a direction that the appellants, including Capital, disgorge all proceeds received in connection with the fraudulent scheme and the appointment of a trustee to receive such funds on behalf of the defrauded public investors, a step somewhat similar to the step already taken by the Court herein by its appointment of Special Counsel and a new interim Board of Directors for ICC.

In addition, and perhaps most relevant to the instant case, the court affirmed the District Court's order of a temporary freeze on the assets of the appellants, including Capital, stating:

> "To effect [the purpose of compensating defrauded investors] there may be circumstances where a district court should temporarily freeze defendants' assets to insure that they will be available to compensate public investors...."
>
> "... Because of the fraudulent nature of appellants' violations, the court could not be assured that appellants would not waste their assets prior to refunding public investors." (458 F2d at 1106)

The allegations contained in the complaint herein can be reasonably construed as alleging that defendant Vesco transferred the fruits of his fraudulent scheme to Vesco & Co., his corporate alter ego. As stated above, the assets so transferred, (which we now find were in the form of 800,000 shares of ICC), might well represent the only asset which will be available to compensate ICC for the fraud perpetrated on it. Viewed in this light, the necessity for the presence of Vesco & Co. in this case and the full meaning of the allegation relating to Vesco's transfer of assets (and the inference to be drawn from said allegation) becomes clear.

Without recourse to such transferred assets, a judgment in plaintiff's favor herein will have little if any meaning or effect. For this very reason it has been stated that "[i]t is for federal courts to adjust their remedies

so as to grant the necessary relief where federally served rights are invaded." J.I. Case Co. v. Borak, 377 U.S. 426, 433 (1964); see, also, Mills v. Electric Auto-Lite Co., 396 U.S. 375, 391 (1970). Indeed, this is the mandate followed by the court in Manor Nursing when it affirmed the judgment against a defendant who had no apparent direct part in the actual scheme but, when by reason of being a transferee of assets performed a necessary and essential part in the effectuation thereof. Vesco & Co., as a transferee of Vesco's assets, stands in the same light.

Based upon the foregoing, it is respectfully submitted that it cannot be said that "it appears beyond doubt that plaintiff can prove no set of facts in support of [its] claim which would entitle [it] to relief" against Vesco & Co. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Indeed, in the instant case, a finding that there is a claim stated against Vesco & Co. is required under the authority of Manor Nursing. Thus, the complaint states a claim under the Federal securities laws and this Court, therefore, has subject matter jurisdiction.

Since there is a claim stated under the federal securities laws, service upon Vesco & Co. in Delaware was proper under §27 of the Securities Act of 1934 (15 U.S.C. §78aa), which provides for service "in any district of which the defendant is an inhabitant or wherever the defendant may be found".

Based upon the foregoing, Vesco & Co.'s motion to dismiss the complaint should be denied in all respects.

POINT V

THE COURT HAS SUBJECT MATTER JURISDICTION WITH RESPECT TO ALL CLAIMS ASSERTED AGAINST DEFENDANT EISENHAUER, AND SERVICE WAS PROPER WITH RESPECT TO HIM

In this action, plaintiff charges the defendants with violation of the 1934 Act and bases jurisdiction of the claims asserted in the complaint upon §27 thereof as well as upon the doctrine of pendent jurisdiction. It is apparently defendant Eisenhauer's position that the complaint fails to state a federal claim as to him and therefore should be dismissed in that there is no basis for pendent jurisdiction as to the other claims asserted. A reading of the complaint shows that this argument is without merit.

Contrary to the assertion contained in defendant Eisenhauer's memorandum (p. 4) that "[n]owhere in the complaint is it alleged that Eisenhauer committed any act that could even be remotely connected with a violation of the Securities Laws", it is alleged in paragraphs 6 and 7 of the complaint that:

> "6. Beginning in or about 1970 defendant Vesco and the defendants named in the next paragraph embarked upon a scheme. . . .
>
> "7. In engaging in the aforesaid scheme and fraudulent acts and practices, defendant Vesco has acted in concert with and has been aided and abetted by defendants. . . Eisenhauer. . . ." (Emphasis added.

Thus, defendant Eisenhauer is alleged to have "acted in concert with" and "aided and abetted" the commission of the entire scheme alleged in the First Count of the Complaint, a count clearly predicated upon the Federal securities laws. As was shown in Point IV, the allegations of the complaint must be liberally construed and are deemed admitted. Caserta v. Home Lines Agency, Inc., 154 F. Supp. 356 (S.D.N.Y. 1957). Gold v. Macy, 234 F. Supp. 764 (E.D.N.Y. 1964). The substantive merits of the claim, however doubtful, are not a subject for determination. Abdelnour v. Coggeshall & Hicks, 287 F. Supp. 135 (S.D.N.Y. 1968). The complaint should not be dismissed unless it appears beyond doubt that plaintiff could prove no set of facts in support of its claim which would entitle it to relief. Jenkins v. McKeithen, 395 U.S. 411 (1968) reh. den. 396 U.S. 869; Conley v. Gibson, supra, 355 U.S. 41 (1957).

One who aids and abets the violation of the Federal securities laws is liable therefor as if he had been the perpetrator. In Pettit v. American Stock Exchange, 217 F.

Supp. 21 (S.D.N.Y. 1963), the complaint alleged that the defendant aided, abetted and assisted an illegal distribution of stock. The court denied defendant's motion to dismiss, stating:

> ". . . knowing assistance of or participation in a fraudulent scheme under Section 10(b) gives rise to liability equal to that of the perpetrators themselves. . . ." (217 F. Supp. at 28).

See, also, SEC v. North American Research & Development Corp., 424 F. 2d 63, 81 (2d Cir. 1970). Brennan v. Midwestern United Life Ins. Co., 259 F. Supp. 673, 681 (N.D. Ind. 1966).

Since Eisenhauer is alleged to have aided and abetted in the entire scheme alleged in the complaint, it clearly states a claim against him under the Federal securities laws and the Court has jurisdiction of all claims asserted in the complaint against him.

Eisenhauer's contention that he was improperly served is similarly without merit. According to the Affidavit of Substituted Service of James P. Pettit, sworn to on June 12, 1973 and filed with this Court, Mr. Eisenhauer was served by "nail and mail" service as provided for in New York CPLR 308(4). That is, when personal service could not be made with due diligence, service was made by affixing a copy of the summons and complaint to the front door of Eisenhauer's

residence and by mailing a copy of the summons and complaint to said residence.

Service of the summons and complaint upon Eisenhauer in New Jersey in the above-described manner was clearly proper. Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 77aa) permits process to be served in any district where the defendant is an inhabitant or may be found.

Rule 4(e) of the Federal Rules of Civil Procedure states that where a statute so provides for extraterritorial service, such service may be made in the manner provided for in Rule 4. Further, Rule 4(d)(7), when read in conjunction with Rule 4(d)(1), provides that service upon an individual may be made in the manner prescribed by the law of the state in which the district court is held.

New York CPLR Rule 308(4), when read in conjunction with CPLR Rule 313, provides that when service cannot with due diligence be made under subparagraph (1) and (2) of Rule 308, service can be made upon a non-resident of the state

> ". . . by affixing the summons to the door of . . . the . . . dwelling place or usual place of abode. . . of the person to be served and by mailing the summons to such person at his last known residence."

Thus, service upon defendant Eisenhauer, having been

made in accordance with New York CPLR Rule 308(4), was proper and he is, therefore, subject to the jurisdiction of this Court.

By reason of the foregoing, defendant Eisenhauer's motion to dismiss the complaint should be denied in all respects.

Dated: New York, New York
June 26, 1973

* * * *

Respectfully submitted,

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Of Counsel

Transcript of Proceedings before Judge Charles E. Stewart on June 27, 1973.

(427a - 454a)

Transcript
gtr 428a

109-15(d)

TO: GSF, Hanfel

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

vs. : 73 Civ. 2516

ROBERT L. VESCO, et al., :

Defendants. :

Before:

HON. CHARLES E. STEWART, JR.,

District Judge

June 27, 1973
2:30 p.m.

APPEARANCES:

SHEA, GOULD, CLIMENKO & KRAMER, ESQ.,
Attorneys for plaintiff
BY: SHELDON CAMHY, ESQ.
C. LEONARD GORDON, ESQ., of counsel.
and
DAVID M. BUTOWSKY, ESQ.,
Special counsel.

HANNOCH, WEISMAN, STERN & BESSER, ESQS.,
Attorneys for defendant Vesco & Co., Inc.
BY: LAURENCE B. ORLOFF, ESQ., of counsel
and
ARUM, FRIEDMAN & KATZ, ESQS.,
BY: DAVID G. MILLER, ESQ., of counsel.

introduced to Mr. Orloff.

MR. MILLER: I wasn't certain it was necessary, but out of an excess of caution --

THE COURT: What do you have in mind as far as presentation in time we are talking about?

MR. ORLOFF: My time I would guess, depending on counsel's presentation, would be something like 15, 20 minutes.

We, of course, are on three matters really; opposition to the order to show cause signed by your Honor on the 7th of June, I believe, or the 8th of June, which matter was argued, the substance of it was argued at some length last week, opposition to the injunction sought by the order to show cause your Honor signed last Friday and our motion to dismiss, which really raises essentially the same arguments that we woudl raise in opposition to their application.

THE COURT: All right.

MR. TERRELL: Your Honor, my name is Dennis Terrell from Shanley & Fisher, also of the New Jersey bar. We would ask that we could appear specially for the purposes of this motion.

Again, our interest here is the same as Mr. Orloff's. We oppose the application presently presented

by ICC and we also have a motion to dismiss on behalf of the three corporate clients we represent, Fairfield General, Fairfield Aviation and Skyways Leasing.

I would expect that mine would take about 15 minutes, also.

THE COURT: I fear we will run out of time. Let us wait and see.

Is there anybody else who wants to be heard?

MR. BUTOWSKY: Not I, your Honor.

THE COURT: You gentlemen?

All right. Let us proceed and see where we are at 3:30.

MR. CAMIY: Your Honor, as a somewhat discrete matter, I am going to take the question of the motion to enjoin the prosecution by a company called Vesco & Co. of an action in the State of New Jersey.

Now, this action was instituted early in June of this year after we had brought the ICC against Vesco action. The complaint in that action has four causes of action, the most important of which asks the courts of New Jersey to invalidate this Court's order and to decree that the court appointed board of directors does not have authority to act and enjoin them from exercising the prerogatives and powers of directors.

Your Honor, that action was instituted by, as I said, a company called Vesco & Co. and this Court has before it a good deal of information about Vesco & Co., althourhg perhaps not all it would like.

What is known on this record is that Vesco & Co. is entirely a creature of Mr. Robert Vesco. Its property consists of property he contributed to it, its management consists of his wife and his secretary and theoretically the beneficial owners of its stock are his children.

Mr. Vesco created Vesco & Co. in July of 1972 at a time when he had perpetrated a number of the acts alleged against him in the complaint, indeed, most of them, and at a time when the Securities and Exchange Commission was very much after him.

I think on this record Vesco & Co. must be regarded as the alter ego of Robert Vesco.

Your Honor, Robert Vesco was a party to the SEC action and the judgment that was entered in the SEC action was entered in an action in which there was impersonum jurisdiction over Mr. Vesco, his counsel knew this judgment was being entered, they had an opportunity in the SEC actio.. to oppose the entry of the judgment, they did not do so. They have every opportunity in the

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SEC action to move at the foot of the judgment for relief from it and they haven't done so.

I think for Mr. Vesco to go into the courts of New Jersey, albeit through his alter ego Vesco & Co., and claim rights as a stockholder is a direct frontal assault on this court's judgments in an action to which he was a party.

We believe that the SEC acquired sufficient interim authority so that the judgment would be binding on any of its stockholders, but if there is any stockholder of ICC who should be bound by it, it should be Mr. Vesco because he was there and I don't think he has the right to ask any New Jersey court to overturn a judgment of the United States District Court for the Southern District of New York.

The question whether this Court's order appointing a board of directors and special counsel was within its powers is something on which we have little doubt. I think the powers of this Court in enforcing the '34 Act to see to it that the company holds an honest annual meeting and there is an honest management until the meeting is held and that the proxy material is right gives the Court whatever powers it needs to see to it that the company is managed during the interim.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE

Certainly a receiver could have done it and instead of calling it a rebeiver if you call it five directors, I think you are down to the same thing. But that is not really the issue before your Honor this afternoon.

The issue before your Honor this afternoon is whether somebody who was a party to the proceeding in which your Honor made that judgment may, dissatisfied with the judgment, walk into a state court of New Jersey and seek to have it set aside.

Title 28 of the United States Code, which deals with when courts may enjoin state court proceedings, has one provision in it which I think is perhaps its most holiest and that is that when an injunction is necessary to proserve and effectuate the judgments of this Court, such an injunction may be entered.

I cannot think of any situation where an injunction would be more necessary to preserve and effectuate the judgments of this court than an injunction against that Vesto action. Certainly you cannot have any claim here about not being a party. Mr. Vesco was there. Certainly there is ample opportunity for him to come in here and as a technical or a substantive objection to the prosecution of this action urge on a

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set of papers and on a memorandum of law some test of the powers of this Court to enter its judgment. He could do likewise in the SEC action.

But for him to do so in a New Jersey equity court is, in my opinion, if not contemnation, certainly not within what this Court is permitted to accept as collateral attacks on its judgment.

That Vesco action also contains three other causes of action. They are derivative actions. They seek damages against directors.

This Court's judgment appointed Mr. Butowsky for the very purpose of vindicating the corporation's rights against those who have breached their fiduciary duty. Mr. Butowsky is trying to do that job. In doing that job he has to deal with all kinds of people; former and present directors, he has to deal with people who may have defrauded the company and he has to make a lot of decisions.

If stockholders are going to be allowed to go into New Jersey courts and bring their own derivative actions, Mr. Butowsky's actions are going to be hampered, he is going to be sniped at from all sides and he will hav a difficult time doing this work.

But this is not an ordinary stockholder,

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this is Robert Vesco, and if any stockholder should be enjoined from trying to assert the rights of ICC it ought to be Mr. Robert Vesco, whether he uses this corporation or whether he sues under his own name.

For those reasons, your Honor, we think you should grant the motion to preliminarily enjoin the pendency of the state court action.

I would like to proceed now to the question of an injunction with respect to the transfer of certain assets.

THE COURT: What did Mr. Vesco do to ICC according to your position and why should you say if anybody it should be Vesco that should be enjoined?

MR. CAMHY: He should be enjoined because he was a party to the SEC action. In other words, he had an opportunity to oppose that injunction there. He still has an opportunity to oppose that injunction there. He could move to vacate it, he could move here.

This court acquired enough jurisdiction over Mr. Robert Vesco so he shouldn't be able to walk across the river and sue you. He ought to be right in here if he has anything to say about that judgment. That's my point.

When I say if anybody him, I don't mean because

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he has been such an invideous person. I think he is entitled to due process of law, too.

I assume your Honor will make whatever decisions you have to make in the criminal case and we hope they will be constructive in respect of ICC, we know they will be constructive in the overall result, and there will be litigation here and if we can ever get the right kind of service on Mr. Vesco he will get his time in court.

But this court has acquired personal jurisdiction over Robert Vesco and they acquired it in the action in which they issued that order and judgment and if Robert Vesco has any complaints about that order and judgment there is a forum for which he can make it and he has no right to select some other forum and to seek to have the courts of New Jersey overturn this court's judgments.

THE COURT: You referred to a criminal action. I assume you mean the SEC action.

MR. CAMHY: Excuse me, the SEC action, yes.

THE COURT: Go ahead.

MR. CAMHY: In respect of the motion to place a restraint on certain assets, I will not relate all of the facts in the interest of brevity. I will first, I

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MR. CAMHY: Thank you, your Honor.

MR. ORLOFF: Your Honor, let me address myself first to the reqeust for an injunction against further prosecution of the New Jersey action.

Needless to say, and I won't dwell on it at length, we take the same position with respect to that application insofar as this Court's jurisdiction is concerned over Vesco & Co. that we took with respect to the other application for relief. I argued the jurisdictional question at length before your Honor about a week or ten days ago and in view of your Honor's time limitations I don't see any useful purpose to be served by dwelling at length on that. So let me respond specifically to the substantive point raised by the plaintiff on that particular application.

It is very interesting to me to hear in the space of seven or eight or ten days the plaintiff, recognizing the deficiencies in his complaint, has suddenly magically transformed Vesco & Co., Inc. into Robert Vesco.

The complaint was purportedly filed against, among others, Vesco & Co., Inc., in this case, the orders to show cause were directed against Vesco & Co., Inc., we argued last week whether a cause of action was stated

against Vesco & Co., Inc. and whether this Court had jurisdiction over Vesco & Co., Inc., and now I hear today that we are not talking about Vesco & Co., Inc., we are talking about whether this Court has jurisdiction over Robert L. Vesco.

Well, I am not here to argue that proprosition. I'm here to urge your Honor that you should not, under any circumstances, make a determination on the basis of bare conclusions in affidavits and no allegations in a complaint, and I say no allegations because you can't find any in this complaint, whether your Honor should make a determination that Vesco & Co., Inc. and Robert L. Vesco are one and the same, because we deny that they are the same and we have set forth by affidavit stating facts the reasons that that is not so.

Counsel talks about due process of law. It would seem to me, your Honor, that at the very least the mere statement by Mr. Butowsky in his affidavit that Vesco & Co., Inc. is Vesco and counsel's statement here today hardly proves that point in view ofthe factual material that we have presented to the Court and further in view of the fact that they presented nothing by way of evidence to support that claim.

But regardless of that and aside from that,

I think your Honor must focus on this particular application on what the legal basis is, if any, for this Court taking the extraordinary step of enjoining a state court proceeding. And it is admitted by the plaintiff that the sole basis for the relief sought is 28 USC Section 2283. That statute prohibits this Court and, indeed, any federal court, from enjoining a state court proceeding, except under certain very specific circumstances.

One is where authorized by act of congress, and it is not argued we haven't it here.

The second is where it is necessary in aid of the Court's jurisdiction. While that reason is alluded to, again, I don't get the impression that is seriously urged here.

The third reason is to protect and effectuate the judtments of this Court, and that is the reason that was urged upon your Honor.

The Vesco & Co., Inc. action in New Jersey, contrary to counsel's statements, was not instituted after ICC filed its suit in this court, it was instituted on June 1 of this year and we attached to our brief, your Honor, a copy of the first page of the complaint filed in the New Jersey court with the

clerk's stamp filed on June 1, 1973. It is the last page of our brief.

THE COURT: Yes, I see it.

MR. ORLOFF: And that, under our state court procedure, as under the federal procedure, is when an action is begun. So that this case was pending at the time ICC brought its action, which it filed with your Honor on or about June 7th or 8th of this year.

The Vesco & Co. New Jersey law suit contains four counts. Only the fourth count is even arguably related to any judgment of this Court, because only the fourth count deals, I would submit, with even the subject matter of any judgment of this court.

As I read the judgment of this court, your Honor did appoint certain directors and you did appoint a special counsel and you did spell out certain broad areas of responsibility on their part.

The Vesco & Co., Inc. lawsuit in the fourth count thereof is essentially not an attack upon your Honor's judgment, but, rather, seeks to question and to seek legal relief against the then directors of ICC for their actions in consenting to that judgment, and that is the primary essence of the fourth count of the complaint.

To say that Vesco & Co., Inc. or any stockholder of ICC -- and I think the notion that somehow Vesco & Co., Inc. should be specially treated has no basis in fact -- to say that a stockholder of ICC cannot question the acts of the directors is to deny all established principles of corporate responsibility and accountability. It would be as though somebody brought a money damage suit against a corporation in jurisdiction A and the directors of the corporation voted to consent to a $1 million default judgment in that case which was binding on the corporation and stockholders of the corporation, feeling aggrived by what the directors had done, proceeded in jurisdiction B where they had jurisdiction over the directors to challenge the propriety of that consent. And that, in essence, is what we are doing here and I can't imagine in that kind of a situation that the Court, which entered the money judgment in jurisdiction A would conceive it had the authority to prevent the stockholders from seeking redress.

Now, we are not talking here about whether the --

THE COURT: It would seem to me that argument doesn't quite deal with the problem here whether or not

I ought to enjoin Vesco & Company.

MR. ORLOFF: I think it does, your Honor, in this sense --

THE COURT: The injunction, if I issue an injunction, will be purely a preliminary injunction, it isn't going to doanything more, hopefully, than preserve the status quo.

MR. ORLOFF: Your Honor, if the injunction is preliminary, final or even a temporary restraining order it still must be grounded in this Court's power. This Court's power is determined under section 2283. Both sides admit that. The question is whether such an injunction is necessary to protect and effectuate the judgment of this court.

THE COURT: That's right. It seems to me that I have the power to issue the injunction.

I will put it another way. I have the power to issue the injunction if I need to so really there are two questions, do I need to do it -- I guess it really comes down to that question. If I really need to do it, I think I have the power.

MR. ORLOFF: I respectfully take an issue with your Honor.

THE COURT: I suggest I need to be told why

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I don't need to do it.

It seems to me there is a substantial question here and to put it in two words, why not?

MR. ORLOFF: I submit to your Honor the question should be phrased theother way.

THE COURT: Why?

MR. ORLOFF: When a party is seeking an injunction from this Court the question is why.

One of the problems that I saw and one of my observations on even the ruling last week, which is done, I am not trying to reargue it, is that there appears to be a presumption that if the defendant can't be harmed, that is a basis for an injunction. That is contrary to all established principles of equitable relief. The burden is always on the plaintiff to show why an injunction is necessary. And I don't think with respect to even count 4 of our complaint there is any necessity --

THE COURT: I think your point is right. You don't need an injunction unless there is a pretty good reason to do it and then it seems to me you have to satisfy yourself there is a good reason, and if you need to do it, then you have to stop and decide whether it is going to be harmful to do it. That is what I

was getting at when I say why not.

I am crossing a bridge which I haven't yet crossed, but I am assuming it is clear that an injunction would be useful and perhaps important here. Once that burden has been satisfied, I guess the next question, as I have indicated, is, is there going to be any unfavorable consequence? That is what I was getting at.

MR. ORLOFF: Perhaps we are in the area of semantics, but it seems to me, your Honor, that the question has to be whether the injunction is necessary. That is the language of the statute -- to protect or effectuate the judgment of this Court. Not whether it would be convenient, helpful, perhaps -- convenient and helpful really are the words that I think the plaintiff is relying upon -- the question is necessary. I think the directors of ICC, particularly the former directors of ICC, whose actions we seek to question in the New Jersey suit, are well able to defend themselves in that action. There is no reason why given the jurisdiction over them in that action, given the limitations of section 2283, there is no reason why even if we looked at it in [illegible] terms of convenience, this Court should enjoin.

THE COURT: I suppose we may be dealing

with semantics. If it is necessary you do it, but before you decide it is necessary I guess you have to look at the question whether or not it is going to cause some harmful and perhaps unnecessary consequences, which I guess is illustrating that there are some semantics in this.

I suppose the question is, as it always is, what is right?

I think since we are getting close to 3:30 I would like to ask for you to tell us what you think.

MR. ORLOFF: I do have some more to say, your Honor, but, of course, I will defer to counsel.

MR. TERRELL: Your Honor, my name is Dennis Terrell.

Your Honor, I represent Fairfield General, Fairfield Aviation and Skyways. More importantly, I represent over 6000 shareholders that own these companies.

As your Honor well knows, none of these companies were made a party in the SEC action. ICC now tries to bring them into this present suit by alleging a violation of the 1934 Act on the basis of the dividend which was given to the ICC shareholders and which created Fairfield General.

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I submit to your Honor and it is in response in a way to a question you put to Mr. Camhy, that at the time of this transaction if the stock of Fairfield Aviation was given to the ICC shareholders as a dividend, there would be no purchase or sake in a security. The ICC shareholders would own exactly the same thing, they would just own them in two certificates.

All that happened was that the stock of Fairfield Aviation was transferred to Fairfield General because the directors of ICC wanted to establish a holding company situation and then that stock was transferred to the shareholders of ICC as a dividend, again, the shareholders owning exactly the same thing before and after the dividend.

THE COURT: But at least significantly enough of a transaction that you are unhappy with it.

MR. TERRELL: No, sir, I am not unhappy with it. It is a fait accompli. One way would be no violation or purchase or sale, the other way no violation or purchase or sale. They are exactly the same.

I think if your Honor reviews thecases, especially in the Second Circuit, beginning with Birnbaum and going to the Arrico v. Syracuse Chima case

down to Bankers Life, they say very specifically there must be some consideration to have a purchase or sale. Somebody must end up with something different. That didn't happen here and this transaction was not a purchase or sale under that act.

I think our point was made in our brief, your Honor, and I think you understand our point. If you review those cases and consider that the Fairfield Aviation stock was put out as a dividend there would be no violation, no purchase or sale and exactly the same thing happened just substituting Fairfield General as the company which owed the stock.

In regard to the New Jersey actions which Fairfield General has instituted, unlike the Vesco & Company matter, there is no judgment which this Court has to protect in connection with those lawsuits.

The first lawsuit is on the lease. It is a rental lawsuit. Except forthe presence of Mr. Vesco, I might even say it is a garden variety lease situation covered by New Jersey law to be decided by New Jersey courts. There is nothing in that lawsuit which prevents your Honor from deciding the issues raised by ICC against the other defendants in this case. The only [illegible] possible section of the injunctive law and exceptions

under that law would be in aid of your Honor's jurisdiction.

I don't see any basis whatsoever for applying that particular exception to the anti-injunction lawsuit started by Fairfield General against ICC in New Jersey. They are rental lawsuits. They have nothing to do with the SEC claims. As a matter of fact, the SEC claims could be asserted as a defense if ICC wanted to do that in New Jersey. But those claims have absolutely nothing to do and, in fact, I might submit, your Honor, i in fact, you had them over here you would probably sever them from the main case they have so little to do with the main case that is before your Honor.

So, therefore, we are in a much different position --

THE COURT: Can you go back to this question of transfer of stock.

You said something I have been puzzling about You said it didn't make any difference anyway it was done. Can you explain that?

MR. TERRELL: Yes, sir.

If Fairfield General had never been created and the board of directorsof ICC decided, as they did as a matter of fact in November of 1970, to dividend

out the Fairfield Aviation operation, what would have resulted would have been the stockholders of ICC receiving as a dividend the stock of Fairfield Aviation as a separate independent entity and company. However, after that transfer the ICC stockholders would have owned in two certificates exactly what they would have owned before the dividend.

THE COURT: You mean because with the one certificate they could have owned --

MR. TERRELL: Fairfield Aviation, with the two certificates they owned Fairfield Aviation and ICC.

Now, all that happens is that Fairfield General is substituted as the holding company for Fairfield Aviation, so instead of those stockholders receiving Fairfield Aviation stock as a dividend they receive Fairfield General stock as a dividend.

THE COURT: Maybe this is too simple an analogy and maybe it is no analogy at all, but if I have $5 and I buy a share of stock for $5, I wind up with a share of stock which is at the moment worth $5, is it the same thing, there is no difference but that certainly is a purchase within 10(b)(5).

Now, why isn't this within 10(b)(5)?

450a

It doesn't seem to me that the key is whether your own personal balance sheet has changed any, the key is whethre there has been a transfer of stock, isn't it?

MR. TERRELL: For value, your Honor, for value.

THE COURT: I paid $5 for this piece of stock.

MR. TERRELL: Yes, sir,you paid $5, but in the dividend situation nobody paid $5, somebody just got a certificate which said, "You now own exactly what you owned before, but it is evidenced by two certificates."

Nobody paid $5. As a matter of fact, nobody could have even have stopped the dividend from coming. So that is the difference in your analogy, your Honor. Nobody paid the $5 to get the stock and that is what all those cases, especially in the Second Circuit, say and that is essentially the basis ofour position.

THE COURT: If there is a stock aplit two for one, that is not a 10(b)(5) transaction?

MR. TERRELL: No, sir. No, sir. But this isn't even a stock split.

451a

THE COURT: No, I know.

MR. TERRELL: This is on the scale of purchases or sales down the scale from a stock split, because it could be after the stock split the stock might be put at a different value, I don't know, and that might be another question. But here you don't have that. So I think, your Honor, those are our positions and I think theyare set forth in our brief.

THE COURT: All right. I am perfectly willing to fix a date to here some of these questions debated more at length if you all feel the need for it.

I feel that they have been very adequately briefed. I feel you have raised with me today the important questions and I would be happy to receive supplementary materials from any of you who feel the need to and, as I have said before, if any of you feel really strongly that you need more time to argue this I will be glad to consider that.

I would hope that that wouldn't be necessary.

MR. CAMHY: Your Honor, we wouldn't make that request, but we do request a TRO be continued until it is decided.

THE COURT: Now, howam I going to do that?

MR. CAMHY: I think your Honor has power to extend the TRO.

THE COURT: Hasn't it gone for 20 days?

MR. CAMHY: Yes, it has gone 20 days, your Honor.

THE COURT: As I understand therule, I can't do it except on consent.

MR. CAMHY: Then, your Honor, we request at least an injunction be issued today subject to possib. revocation after your Honor has further considered the matter.

THE COURT: All right. I appreciate the problem and I have given it some thought. I will act on this question before 5 o'clock. I am not prepared to do it right now.

What about the opportunity, Mr. Orloff, to be heard further, do you feel any need?

MR. ORLOFF: I would at least like the opportunity to file a supplemental memo, your Honor. I might point out that with respect to the new application, the one against the New Jersey lawsuit, your Honor signed an order to show cause last Friday and there were no restraints and there are no restraints at this point, it would simply be a mtter as far as that goes of

continuing the argument on the return date.

THE COURT: That, of course, will remain in effect is what you are saying.

MR. ORLOFF: There is no restraing in that action.

MR. CAMHY: May I interrupt. He points out something very important. We did not because there was no problem, we did not secure a TRO on the Vesco case and that is perhaps the most important, because that is the one which, in effect, seeks to enjoin the directors from acting.

The return date is in about three days, isn't it?

MR. ORLOFF: I don't know what you are referring to.

MR. CAMHY: In the Vesco & Co. New Jersey action.

MR. ORLOFF: There has been no application to the Court for an injunction in the New Jersey action.

MR. CAMHY: No, but the summons is returnable in ten days.

MR. ORLOFF: I would be happy to send a brief into your Honor long before ten days from now.

If counsel is referring to his time to answer, your Honor has not yet ruled. I will give him more time to answer in that case. I am not looking to take advantage of him in that way.

THE COURT: All right.

MR. ORLOFF: I don't feel a need, your Honor, I should say, in view of your Honor's expression on the subject, to argue the matter further orally, but I would like to at least submit to your Honor in writing the balance of my argument.

THE COURT: All right. I would like to get from anybody who feels the need to do so any additional papers by noon on Friday.

I will see to it that you are advised before the end of the day as to what I am going to do with the question which Mr. Camhy has put to me of an injunction.

All right, thank you.

—

Letter from Hannoch, Weisman, Stern & Besser, Esqs.,
to Judge Charles E. Stewart, dated June 29, 1973,
filed August 28, 1973.

(455a - 465a)

Letter Memorandum 456a

gcc: G. S. Freedman

June 29, 1973

Honorable Charles E. Stewart
Judge, United States District Court
Federal Courthouse
Foley Square
New York, New York

1109-15

Re: International Controls Corp. v.
Vesco, et al (73 Civ. 2518 [CES])

Dear Judge Stewart:

The following is by way of supplementation, amplification, and reply, on behalf of Vesco & Co., Inc., in connection with the incomplete oral argument of June 27, 1973 on the following applications, on which, as I understand it, the Court is prepared to rule by Monday, July 2:

[A] The return date of the order to show cause of June 8, 1973 why, inter alia, Vesco & Co., Inc. should not be preliminarily enjoined with respect to some 846,380 shares of I.C.C. stock held of record by it;

[B] The return date of the order to show cause of June 22, 1973, why Vesco & Co., Inc., et al, should not be preliminarily enjoined from prosecuting further the New Jersey

tion of "Vesco & Co., Inc. v. Lawrence B. Richardson, Jr., al.";

[C] The motion of Vesco & Co., Inc. to dismiss the mplaint against it for lack of subject matter jurisdiction, ck of personal jurisdiction, insufficiency of process, and/or ilure to state a claim - all as set forth in its notice of tion dated June 26, 1973.

In view of the fact that the major thrust of the oral gument on June 27 was directed to the order to show cause of ne 22, and the issue of proposed injunction against the New rsey lawsuit, I shall deal with that subject first.

I - The New Jersey Lawsuit

It should be stated preliminarily that the jurisdic- onal, process, and failure to state a claim defenses, all of ich have been raised by motion, are applicable to this issue well as to the other order to show cause, and are incorporated rein by reference.

What plaintiff here seeks to do is to enjoin in its tirety an action which was commenced a week before the instant it, and of which at least 3 of the 4 Counts clearly do not ll within this Court's power to enjoin.

I appreciate the fact that Your Honor remarked that u thought you had the power to enjoin this action and that it

was simply a matter of whether you ought to exercise that power. I respectfully request that you reconsider that statement in view of the following (which I did not get to in my oral argument):

1. The Court's power to enjoin a State Court action is grounded solely in 28 U.S.C. §2283, which contains an absolute prohibition as to such an injunction with limited exceptions (see Mitchum v. Foster, 407 U.S. 225 [1972]), and as to which the Supreme Court has held as follows, in Atlantic Coast Line Railroad Co. v. Engineers, 398 U.S. 281 (1970):

> (a) "Any doubts as to the propriety of a Federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in orderly fashion to finally determine the controversy" (398 U.S. at 297);
>
> (b) "A Federal court does not have inherent power to ignore the limitations of §2283 and to enjoin state court proceedings merely because those proceedings interfere with a protected federal right or invade an area preempted by federal law, even when the interference is unmistakably clear" (398 U.S. at 294);

(c) With respect to the "in aid of jurisdiction" exception, "it is not enough that the requested injunction is related to that jurisdiction, but it must be 'necessary in aid of' [emphasis the Court's] that jurisdiction" (398 U.S. at 295);

(d) It is not sufficient, to come within the exceptions to §2283, to show that the matter properly before the state court is also within the confines of the federal suit, or even that the federal court has exclusive jurisdiction over its case. If the state court errs in assuming the scope of its jurisdiction, the party aggrieved can proceed in the state appellate courts and ultimately, if necessary, in the Supreme Court. "Lower federal courts possess no power whatever to sit in review of state court decisions," and "(p)roceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts with relief from error, if any, through the state appellate courts and ultimately this Court" (398 U.S. at pp. 296 and 287). Also see Vernitron Corp.

v. Benjamin, 440 F. 2d 105 (2nd Cir. 1971), cert. den. 402 U.S. 987 (1971).

2. The only portion of the New Jersey action which even arguably comes within any of the exceptions to §2283 is the Fourth Count. As pointed out on oral argument, the major thrust of the Fourth Count is directed towards the I.C.C. directors' alleged breach of fiduciary duty in consenting to the Final Judgment (as to I.C.C. only) in the S.E.C. suit, and certainly such relief is not, even if granted in the form of damages against the then - I.C.C. directors, an interference with this Court's judgment, and enjoinder of the action is not necessary to protect and effectuate the judgment.

3. Whatever the arguments may be as to the Fourth Count of the New Jersey lawsuit, the First, Second and Third Counts clearly do not come within any of the exceptions to §2283. These are essentially derivative-type claims against certain former directors and/or officers of I.C.C. Some of them are not even being sued by I.C.C. The claims must and will stand or fall on their own merits, but the significant point, in the instant context, is that enjoinder thereof is in no way "necessary" to protect or effectuate this Court's judgment nor is it "necessary" "in aid of" this Court's jurisdiction. The judgment continues regardless of these Counts of the New Jersey lawsuit, and Mr. Butowsky continues to be empowered to prosecute

on behalf of I.C.C. as he sees fit. The only basis for injunction of Counts One, Two and Three would be this Court's assumption of exclusive jurisdiction over all suits by, against, on behalf of, or relating to I.C.C. - and such a usurpation of authority would be directly contrary to §2283 and the constitutional separation of federal and state authority. It would always be "convenient" and "helpful" for a federal court, I suppose, in proceeding to exercise its jurisdiction, to have any and all other actions of a similar nature in the state courts restrained; but if such were the interpretation to be given to §2283, the statute would be virtually meaningless. And the cases are legion that the mere running of similar claims on simultaneous federal and state tracks is not a basis for injunction under any §2283 exception. St. Paul Fire and Marine Insurance Co. v. Lack, 443 F. 2d 404 (4th Cir. 1971).

4. It is crucial to note that whereas the plaintiff urges that the Fourth Count of the New Jersey complaint is a "direct attack" on this Court's judgment - which allegation we contest, it does not and cannot seriously urge any similar effect of the first three Counts, and virtually limits its argument to the claim that to permit anyone other than Mr. Butowsky to bring actions on behalf of I.C.C. would be "totally contrary to the spirit and purpose" of the judgment.

Not only is such a contention without merit - unless

one reads the judgment as vesting exclusive litigation power in Mr. Butowsky, which is not only contrary to the language of the order but contrary to any legal authority - but also it does not comprise a recognized exception under §2283 and is therefore barred by the anti-injunction features of the statute. The New Jersey action not only involves different issues, and some different defendants, than the pending New York cases, cf. State of Oklahoma ex. rel. Wilson v. Blankenship, 447 F. 2d 687, 693 (10th Cir. 1971), cert. den. 405 U.S. 918 (1972), but participation by I.C.C. in the New Jersey case* in no way interferes with this Court's jurisdiction; and, indeed, I.C.C.'s heated protests with respect to the prosecution of the first three Counts of the New Jersey action raises substantial questions as to the bona fides of their choice of defendants. In any event, these issues are not for resolution by this Court by way of injunction, but may only be raised in the substantive litigation by motion in the New Jersey proceeding.

II - The Requested Injunction Against Transfer, Etc. of ICC stock

This issue has been thoroughly briefed and argued as to the jurisdictional and process defenses and motions by

---

* To the extent I.C.C. desires to participate, since with respect to Counts One, Two and Three, it is only a nominal party.

defendant, and only brief additional comment, by way primarily of reply to the plaintiff's brief, is required here.

The relief sought by plaintiff is indeed extraordinary. On a complaint* which says nothing about Vesco & Co., Inc. other than the statement in Paragraph 5(r) that it "is a Delaware corporation, to which defendant Vesco and his children have transferred certain of their assets", plaintiff asks this Court to take the extraordinary step of, in effect, making a final determination that (i) Vesco & Co., Inc. participated in a scheme in violation of the Securities Laws, (ii) Vesco & Co., Inc. is, in law, merely an "alter ego" of Robert Vesco and liable for all of his obligations, whatever they may be, and (iii) Vesco & Co., Inc.'s major asset - its stock in ICC - should be "frozen" and attached before a trial, without any evidentiary hearing, and solely upon certain non-evidential statements "on information and belief" by this Court's specially-appointed counsel.

There is absolutely no authority for the unusual relief here sought. SEC v. Manor Nursing Ctrs., Inc., 458 F. 2d 1082 (2nd Cir. 1972) is totally distinguishable. In the first place, the "freeze order" in Manor Nursing resulted from a finding, after trial, that Manor had violated the Securities Acts; and, further, a finding by the trial court - after hearing -

---

* And both parties concede it is the complaint alone which must be looked to on motion to dismiss.

that the alleged transferee company, Capital Cities, was "simply a new name for Manor" (458 F. 2d at p. 1094) and that, hence the transfer was fraudulent. Here, there has been no trial, no hearing, no finding (not even as to Robert L. Vesco in the SEC case, as far as we are aware), and not even a legally stated cause of action or factual support for any such findings as against Vesco & Co., Inc. Moreover, the uncontradicted facts before the Court demonstrate the contrary: (i) the alleged "transferee" was incorporated prior to the institution of any of these actions, pursuant to and in furtherance of planning started as far back as 1968; (ii) it was formed in Delaware, and can be found in New Jersey, hardly a "fugitive" jurisdiction; and (iii) Mr. Vesco, allegedly seeking to secret his "loot", is the preferred stockholder of record and is thus entitled to the initial distributions up to approximately $2.5 million.

III - The Defendant's Motions to Dismiss

The defendant, Vesco & Co., Inc. has pending before the Court a motion to dismiss under F.R.C.P. 12(b), (1), (2), (5), and (6). The basis for these applications has been set forth at length in the briefs filed and on oral argument. The reasons parallel to a large extent the contentions asserted in opposition to the applications for injunctive relief, although it must be emphasized that, even if the imagination were to

be strained to find jurisdiction and a viable cause of action against Vesco & Co., Inc., this would hardly warrant the Court in taking the further step, on the papers before it, of finding such immediate, substantial, and irreparable injury as to warrant the exercise of the Court's injunctive powers.

IV - Conclusion

The adage that "hard cases make bad law" is most appropriate herein. Amid the welter of charges hurled at various defendants both by the SEC and now by ICC, it is easy to lose sight of the fact that persons and entities with the name "Vesco" do and should, in the eyes of the law, stand in the same position as other litigants. This is so notwithstanding plaintiff's counsel's somewhat emotional appeal to the contrary on oral argument on June 27.

That this Court saw fit, with ICC's consent, to appoint independent directors and a special counsel, hardly warrants abandoning established common law, statutory, and constitutional principles of due process or reversing the usual burdens incident to injunction applications, and creating special classes of litigants.

Applying those bedrock principles, and treating the parties in this case as ordinary litigants, I respectfully submit that the complaint and all proceedings should be dismissed.

Respectfully Submitted,
HANNOCH, WEISMAN, STERN & BESSER

By /s/ Laurence B. Orloff
Laurence B. Orloff

LBO:mcc
cc: Shea, Gould, Climenko &

Letter from Shea, Gould, Climenko & Kramer, Esqs., to Judge Charles E. Stewart, dated June 29, 1973.

(466a - 470a)

Letter Memorandum

RECEIVED JUL 2 1973

467a

SHEA GOULD CLIMENKO & KRAMER

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...DON D. CANNY
...EL W. INGRAM, JR.
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...AN A. HABAN, JR.
...AEL LEESH
...B. McGRATH
...P. GOLD
...AN C. FINNERAN, JR.
...ENT W. QUINN, JR.

June 29, 1973

Honorable Charles E. Stewart
United States District Judge
Southern District of New York
U. S. Court House
Foley Square
New York, New York

Re: International Controls Corp.
vs. Robert L. Vesco, et al.
73 Civ. 2518

Honorable Sir:

We herewith transmit to you a Supplemental Memorandum in lieu of further oral argument.

We have received a letter dated June 29, 1973 from the attorneys for Vesco & Co., Inc. which urges that the Court should not enjoin the prosecution of the first three counts of the New Jersey action instituted by said defendant.

We respectfully submit that the said first three counts are asserted in the name and right of ICC and are against certain former directors seeking to recover damages from them for in effect consenting to this Court's judgment in the SEC action and for alleged breach of fiduciary duty.

This Court's judgment in the SEC action contemplated that in lieu of an appointment of a Receiver,

Special Counsel would be appointed to vindicate the rights of ICC against former directors. Mr. Vesco was a party to the action in which that judgment was entered. If a Receiver had been appointed, there would have been little doubt of this Court's power under 28 U.S.C. §2283 to protect and effectuate its judgment by enjoining stockholder derivative suits which tended to harass or interfere with the Receiver's work. Since the powers of Special Counsel in vindicating the Corporation's rights are precisely those which would be exercised by a Receiver, we respectfully submit that an injunction is as much an appropriate remedy as it would be if a Receiver had been appointed.

If Vesco & Co. were asserting its own rights against these former directors, a different situation would be presented but the rights sought to be asserted in the first three counts of the New Jersey action are the rights of ICC and by seeking to assert the rights of ICC in an area in which the Special Counsel was authorized to act and against the wishes of Special Counsel, the said New Jersey action conflicts with and obstructs the effectuation of this Court's judgment in the SEC action.

If Mr. Vesco objected to the appointment of Special Counsel, that objection should have been raised in the SEC action. If he wished to compel Special Counsel to proceed along certain lines, he can make those views known by applying in the SEC action at the foot of the Court's judgment therein. However, we submit that he does not have the right to bring actions in the name of ICC and for the alleged benefit of ICC which are at cross purposes with the aims and objectives of the Court

appointed "Receiver" or "Special Counsel." An order directing that these tactics be stopped is an injunction to "protect or effectuate" this Court's judgment in the SEC action.

In almost every area of the law (tax, creditor's rights, etc.), a corporation consisting of a person's wife and children is regarded as a classic alter ego. In the instant case, if defendants feel that on a hearing they could establish some other character to the corporation known as Vesco & Co., Inc., they should by all means be permitted to do so. We would welcome the opportunity to take the testimony of Mrs. Vesco and Mr. Vesco's secretary to determine how independent they really are. However, so far we have been unable to even serve these people with process. They are hardly in a position to claim that they are entitled to a hearing when at the present time they cannot even be "found."

Finally, we wish to point out to this Court that the need to enjoin the transfer of Mr. Vesco's stock in ICC, now held by Vesco & Co., stems from two urgent needs, (1) to preserve assets which may be needed to make good the frauds and restore abstracted proceeds, and (2) to prevent Mr. Vesco from perpetrating further frauds by the use of his ownership of what has heretofore been a controlling 25% interest.

In exercise of its powers under the 1934 Act to enjoin the continuation or further perpetration of statutory violations, this Court has the power to seize the instrumentality of such violation until it is satisfied that said instrumentality has been defused. What ICC seeks on this motion for its own protection is an injunction against the transfer of this instrumentality so

that the Court will be assured that it does not fall into the hands of another Vesco alter ego who will use it to frustrate the efforts of the Special Counsel and the Board of Directors or take other actions such as those set forth in the complaint in the SEC action and in the instant action.

Yours respectfully,

SDC:rb

Sheldon D. Camhy

cc: Hannoch, Weisman, Stern
& Besser, Esqs.

Shanley & Fisher, Esqs.

Letter and enclosure (Reply Brief) sent by mail to counsel for adverse parties.

Plaintiff's Reply Memorandum.

(471a - 477a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against- 73 Civ. 2518 (CES)

ROBERT L. VESCO, et al.,

Defendants.

- -X

PLAINTIFF'S REPLY MEMORANDUM

The following is submitted by plaintiff in reply to certain statements made on behalf of defendants at oral argument:

1. Counsel for Vesco & Co., Inc. have argued that here is no basis in the record for concluding that Vesco & Co. is Robert Vesco's alter ego. We respectfully refer the Court to the very affidavit submitted by Vesco & Co. (Stern Affid. 6/12/73) This makes it clear that Vesco & Co. was a corporation organized by Mr. Vesco, owned by himself, his wife and his children and purportedly managed

by his wife and his secretary. The corporation was organized in July 1972 after most of the fraudulent acts charged in the complaint and at a time when it was well known that Mr. Vesco was under investigation by the Securities and Exchange Commission. We think the foregoing facts provide sufficient basis for a finding (at least in the absence of demonstrated evidence of some independent ownership) that Vesco & Co. is an alter ego for Mr. Vesco.

2. The attorneys for Vesco & Co. represented to the Court that the action instituted by Vesco & Co. in the courts of New Jersey did not seek to attack this Court's judgment but merely to recover damages from certain former directors. An examination of the complaint in the New Jersey action refutes this contention. (Ex. A to Butowsky Affid. 6/22/73) The Fourth Count seeks to have the New Jersey courts enjoin the Court appointed directors from acting as such. Moreover, each of the Court appointed directors is named as a defendant in the New Jersey action.

Mr. Vesco was and is a party to the SEC proceeding in this Court and had and has every opportunity to challenge this Court's judgment either in that proceeding

or in the instant case. He had no right to cause his personal corporate vehicle, Vesco & Co., to seek to set aside such judgment in the state courts of New Jersey.

3. The attorneys for Fairfield General argued that the exchange of shares which took place between ICC and Fairfield General was not "necessary" to the dividend transaction and that the same practical effect could have been achieved by merely dividending out the Fairfield Aviation stock directly. In fact, however, the exchange of shares did occur and was deemed necessary by the defendant-directors and by Mr. Vesco.* In any case, we submit, that the statute applies to the transaction as it was, not as to how it might have been if the parties had decided to do it in another way.

However, even if a dividend of Fairfield Aviation had taken place without the prior creation of Fairfield General and exchange of shares, such a dividend would have been a transaction within the meaning of the 1934 Act. The divi-

*Parenthetically, it may be observed from the complaint herein that Fairfield General was created as a possible vehicle to be used in connection with the I.O.S. related transactions.

dend fundamentally changed each stockholder's interest in ICC by distributing out property of ICC to the stockholders and through them to the public. Fairfield General was not a viable commercial entity. Any gain to the stockholders in the form of dividended shares did not match the loss to the company (and to said stockholders) on the dividend. A stockholder receiving a share of it received something of little or no value. On the other hand, the assets in the hands of ICC at least constituted part of the company's net worth available for the operation of the business and general capital purposes. As we understand it, the test in these cases is whether the transaction made a fundamental change in the nature of a stockholder's interest. (See Vine v. Beneficial Finance, 374 F. 2d 627 (2nd Cir. 1967).

We respectfully submit that in the instant case, there was such a change. As in Vine, the stockholders received involuntarily something they did not want and which was practically valueless in their hands in partial satisfaction of their right to share in the business and assets of ICC. The transaction was not a meaningless "wash." It

represented a real and injurious change in the nature of their investment in ICC.

* * * *

Dated: New York, New York
June 29, 1973

Respectfully submitted,

SHEA GOULD CLIMENKO & KRAMER
Attorneys for Plaintiff
330 Madison Avenue
New York, New York 10017

Legal Memorandum

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

- -X

73 Civ. 2518
(CES)

PLAINTIFF'S REPLY MEMORANDUM

SHEA GOULD CLIMENKO & KRAMER
ATTORNEYS FOR Plaintiff
330 MADISON AVENUE
NEW YORK, N.Y. 10017
212 [illegible]-3200

Letter from David M. Butowsky, Esq., to Judge Charles E. Stewart, dated July 2, 1973.

(478a - 481a)

RECEIVED JUL 3 1973

Letter Memorandum 479a

DAVID M. BUTOWSKY
Special Counsel to
International Controls Corp.
230 Park Avenue
New York, N. Y. 10017
Tel: 725-5360

July 2nd, 1973

Honorable Charles E. Stewart
U. S. District Judge
Southern District of New York
U. S. Court House
Foley Square
New York, New York

1109-15

Re: International Controls Corp. v.
Robert L. Vesco et al, 73 Civ.2518

Dear Judge Stewart:

Your Honor's appointment of Special Counsel for International Controls Corporation ("ICC") was proper and appropriate relief short of the appointment of a receiver. Together with the appointment of an Interim Board of Directors, it was designed to protect ICC and its shareholders by continuing ICC as a viable corporate entity while determining the facts which had led up to the matters involved in the SEC action and taking remedial and corrective action. Had a receiver been appointed, he would be protected from the harrassment and interference of lawsuits against ICC. Similarly, Special Counsel and the Interim Board of Directors should be protected from the harrassment and interference of suits which impinge upon the matters they are required to inquire into and take action upon. An injunction against the lawsuits by Fairfield General, Fairfield Aviation and Vesco & Co. is thus required to protect the judgment of this Court.

As has been shown in the Memorandum of Law, this relief is also necessary to aid the jurisdiction of this Court and is expressly authorized by the Securities Exchange Act.

Your Order appointing me directed me to take:

"... immediate necessary or appropriate action to protect International Controls' claims or possible

> claims against said defendants or companies, including, but not limited to ... the institution of appropriate action to freeze and preserve the assets of said defendants or others who may be obligated to International Controls."

Vesco & Co. should remain a defendant in this action pursuant to these instructions.

The Final Judgment of this Court in SEC v. Vesco provided that a new Interim Board, having no connection with the claim of wrongdoing, be appointed. Subsequently, a new board of directors will be elected by the shareholders after the previous proxy material of ICC has been investigated and any errors therein corrected. The relief sought by Vesco & Co. in its New Jersey lawsuit would compel an election of Directors prior to such investigation and corrections, and indeed, before proxy material could be prepared and distributed in compliance with the Securities Exchange Act of 1934. I submit that action should be enjoined.

Unless the provisional relief sought by ICC is obtained against Vesco & Co. a judgment of damages by this Court against defendant Vesco would be ineffective in the face of his flight and endeavors to remove all assets from the reach of this Court.

Furthermore, unless relief is obtained against Vesco & Co. this Court will be unable to grant effective relief in this action against further violations of law. It is through Vesco & Co. that control of ICC is exercised by defendant Vesco. Only the removal of this control and protection against the further exercise thereof by defendant Vesco or any of his alter egos is appropriate and effective relief against further violations of the Securities Exchange Act. The Interim Board of Directors would be remiss if they did not seek to protect ICC from a return to control of defendant Vesco whom our investigations indicate has injured ICC by flagrant violations of the securities laws and breaches of his fiduciary obligations. For these reasons alone Vesco & Co. should remain a defendant in this action.

Respectfully yours,

David M. Butowsky

DMB:ng

BY HAND

Letter Memorandum 481a

3

Honorable Charles E. Stewart July 2nd, 1973

cc: Hannoch, Weisman, Stern
& Besser, Esqs.

Shanley & Fisher, Esqs.

Plaintiff's proposed findings of fact and conclusions of law in support of its motion for a preliminary injunction and in opposition to the motions of certain defendants to dismiss the complaint, dated July 2, 1973. (Copy submitted to District Court on or about July 2, 1973.)

(482a - 503a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -against- ROBERT L. VESCO, et al., Defendants.	73 Civ. 2518 : PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR A PRELIMINARY INJUNCTION AND IN OPPOSITION TO THE MOTIONS OF CERTAIN DEFENDANTS TO DISMISS THE COMPLAINT

Plaintiff International Controls Corp. ("ICC"), by its attorneys David M. Butowsky and Shea Gould Climenko & Kramer respectfully submits proposed findings of fact and conclusions of law in connection with the following motions submitted to the Court, on June 27, 1973:

1. ICC's motion for a preliminary injunction restraining the transfer of certain assets by defendants Fairfield General Corporation, Fairfield Aviation Corporation, Skyways Leasing Corporation, Robert L. Vesco, Vesco & Co., Inc., Frank G. Beatty, Joel Grady and Alwyn Eisenhauer.

2. ICC's motion to preliminarily enjoin the prosecution by certain of the defendants of two actions in the State of New Jersey entitled "Fairfield General Corporation v. International Controls Corp." (N.J. Sup. Ct., Chan. Div., Essex Co.) and "Skyways Leasing Corporation v. International Controls Corp.," (N.J. Sup. Ct., Law Div., Essex Co.).

3. ICC's motion to preliminarily enjoin prosecution of the action entitled "Vesco & Co., Inc. v. Laurence B. Richardson, et al.," (N.J. Sup. Ct., Chan. Div. Bergen Co.).

4. Motion of defendant Vesco & Co., Inc. for dismissal of the Complaint for lack of subject matter jurisdiction, lack of personal jurisdiction and insufficiency of service of process.

5. Motion of defendant Alwyn Eisenhauer to dismiss the Complaint for lack of subject matter jurisdiction, personal jurisdiction and insufficiency of service of process.

FINDINGS OF FACT

The SEC Action and Entry of Permanent Injunction

1. In November 1972, the Securities and Exchange Commission instituted the action entitled SEC v. Robert L. Vesco, et al., 72 Civ. 5001 (CES) ("SEC action"). In that proceeding, application was made to have a receiver appointed for ICC. The said application, as well as the claim by the SEC against ICC, was resolved by a Final Judgment of Permanent Injunction and Appointment of Special Counsel and Directors dated March 16, 1973 ("Final Judgment") in which this Court appointed Special Counsel and a new interim independent Board of Directors for ICC. The Final Judgment directed Special Counsel to conduct a full investigation into the affairs of ICC, report to this Court and the Securities and Exchange Commission (the "SEC") and take all appropriate action, including, but not limited to, the institution and prosecution of suits on behalf of ICC to recover all assets or monies improperly used, taken, wasted, misappropriated or paid to anyone without appropriate authorization of the Board of Directors of ICC, or in breach of duties owed to ICC. The judgment further provided that:

> ". . . pending the investigation and accounting by the Special Counsel, he shall take immediate, necessary or appropriate action to protect International Controls' claims, interests and rights and pursue all possible claims against the defendants herein or any other persons including, but not limited to, the commencement of legal proceedings to prevent the dissipation or flight of any funds or other assets, the placing of a stop transfer order on securities beneficially owned or controlled by said defendants and/or the institution of appropriate action to freeze and preserve the assets of said defendants or others who may be obligated to International Controls. . ."

By an Order of this Court dated March 25, 1973 George D. Gould, Charles S. Desmond, John Mosler, Allen M. Shinn and Joseph Weiner were named as interim directors of ICC and David M. Butowsky as Special Counsel.

Facts Surrounding Commencement of Instant Action and Request for Injunctive Relief

2. The instant action, instituted on June 7, 1973, appears to be a direct result of the above referred to directions to Special Counsel and charges defendants with violations of various provisions of the Securities Exchange Act of 1934, 15 U.S.C. §78a et seq., ("the 1934 Act") and the rules and regulations promulgated thereunder.

3. Special Counsel claims to have found that:

(a) Defendant Robert L. Vesco ("Vesco") and his group had engaged in an unlawful scheme involving the purchase and sale of securities to use ICC to obtain for themselves the benefit and control of I. O. S. Ltd. ("I.O.S.") and related companies, and other assets of ICC, including the stock of Fairfield General Corporation ("Fairfield General"),

and its subsidiaries, Fairfield Aviation Corporation ("Fairfield Aviation") and Skyways Leasing Corporation ("Skyways"), whose sole business is the ownership and operation of a Boeing 707, Register Number N11RV.

(b) The principal architect of that scheme, defendant Vesco, had failed to appear to plead to a criminal indictment in New York and was a fugitive from justice, living outside of the United States to avoid the jurisdiction of the Courts.

(c) The principal asset of Fairfield General, Fairfield Aviation and Skyways, the Boeing 707, has been removed from the United States, and attempts are being made to effectuate its sale. Once converted to cash, this asset could quickly disappear.

(d) The only other known asset of defendant Vesco that could be available to satisfy a judgment is his stockholdings in ICC and most of that has been transferred to his corporation, defendant Vesco & Co., Inc. ("Vesco & Co.").

The Fraudulent Scheme Alleged

4. ICC is a publicly held Florida corporation whose common stock and warrants were listed on the American Stock Exchange. Defendant Vesco was an officer, director and controlling stockholder of ICC holding approximately 25% of ICC's stock. Prior to January 1, 1971, plaintiff's business consisted in part of the ownership and operation of Fairfield Aviation, a New Jersey corporation and then a wholly-owned subsidiary. Fairfield Aviation in turn wholly-owned Skyways, also a New Jersey corporation.

5. It appears from the complaint and the affidavits submitted in support of plaintiff's motion that sometime during 1971 defendant Vesco formulated a plan by which he would cause ICC to acquire and pay the expenses for a Boeing 707 airplane which would be used as his personal transportation vehicle, and for business largely unrelated to the business of ICC, and pursuant to that plan would cause ICC to transfer said airplane, together with other assets of substantial value, to a corporation controlled and dominated by him, thereby permitting him to have all the enjoyment of ownership of the airplane at the expense of ICC, that defendant Grady, Beatty, Clay and Dodd, who were all officer-director fiduciaries of ICC and/or its wholly-owned subsidiaries (Fairfield General, Fairfield Aviation and Skyways), joined with Vesco in formulating and carrying out that plan, and that Beatty was and is the chief executive officer of defendant Fairfield General and Grady the chief executive officer of defendant Skyways.

6. It further appears that pursuant to said plan, the following steps were taken:

(a) On December 23, 1970, Vesco caused ICC to contribute to Skyways certain aircraft assets (not the Boeing 707) having an aggregate market value of $363,000.

(b) On June 15, 1971, Vesco caused Skyways to purchase the Boeing 707 from Pan American Airways for $1,375,000, of which $343,750 was paid with funds contributed to Skyways by ICC and the balance owed to the seller in twenty quarterly installments.

(c) Between June 1971 and December 8, 1971, Vesco caused ICC to advance approximately $1,000,000 toward the cost of acquiring the Boeing 707 and the refurbishment and improvement of that plane. During the three months ended September 30, 1971, Skyways leased the plane to ICC at a total cost of $439,000. By lease dated as of October 1, 1971, ICC agreed to lease the plane from Skyways for a period of five years at an approximate gross rental of $3,500,000, the larger portions of which were to be paid as monthly rental during the first two years of the lease ($100,000 a month for the first three months, $83,000 per month for the next twelve months). Under the terms of the lease (i) ICC was responsible for service, maintenance, overhaul scheduling and personnel; (ii) Skyways had the absolute right to terminate the lease any time it wished to sell or transfer ownership of the plane; and (iii) all improvements to the plane paid for by ICC became the property of Skyways.

(d) The "refurbishing" of the airplane was such as to make it suitable only as an entertainment and transportation center for Mr. Vesco personally. Its seating capacity was reduced from 150 passengers to approximately 33; entertainment facilities such as a discotheque, dance floor, hi-fi stereo, sauna and other amenities were installed

(e) In November 1971, as part of the aforesaid plan, defendant Vesco caused still another corporation to be organized. This corporation was Fairfield General. It had no assets. At an ICC Board of Directors meeting held December 8, 1971, the ICC Board of Directors adopted resolutions purporting to accomplish the following:

(i) Transfer of all of the stock of Fairfield Aviation owned by ICC to the newly organized Fairfield General. This transfer was made in exchange for stock of the newly organized Fairfield General.

(ii) Declare a purported dividend by ICC to its own stockholders (of which Robert L. Vesco personally owned 25%) of the stock of Fairfield General. This "dividend was accompanied by a 1933 Act registration and prospectus which accomplished an instantaneous "spin-off" launching Fairfield General as a separately publicly held and traded corporation.

By the foregoing means ICC was divested of its ownership and control over Fairfield Aviation, its aviation business, Skyways and the Boeing 707. A new corporate complex was created wholly apart from ICC in which all of the Fairfield Aviation assets, including the Boeing 707, were held. The said complex was controlled by Vesco through his 25% ownership of its stock and the installation of a Board of Directors of his choosing prior to the spin-off, consisting of his co-conspirator defendants Grady, Clay, Dodd and Beatty. This new corporate complex was now the beneficiary of the funds

expended by ICC for the acquisition and improvement of the Boeing 707 and was the lessor under the lease, a lease under which ICC had spent and would spend hundreds of thousands of dollars as escalated rentals during the early months and to pay for the improvements to the Boeing 707, but which provided that if the plane were sold or transferred, ICC's rights as lessee could be terminated on five days notice and would forfeit all of the expenditures it had made for improvements.

(f) Two former directors Laurence Richardson, Jr. and Malcolm McAlpin have given sworn statements in this Court that their consent to the aforesaid exchange and "dividend" was secured by misstatements of fact and omissions of material statements of facts. Principal among these are that:

(i) They were not told the truth about the amount spent on refurbishing the plane, or about the sumptuous nature and extent of the renovations.

(ii) They were not told the onerous terms of the lease to Skyways.

(iii) They were told that the plane would be used and paid for by I.O.S. and would not be an expense to ICC, or used by Mr. Vesco for his personal transportation.

(g) At the time of the distribution of the Fairfield General shares as a dividend to the stockholders, there was issued and delivered a prospectus under the Securities Act of 1933. It appears from affidavits submitted on this motion and from the prospectus itself that said prospectus contained a number of false and misleading statements, among which were the following:

(i) It stated that the cost of refurbishing the plane was $550,000 when, in fact, it was more than $600,000.

(ii) It concealed the fact that the improvements to the Boeing 707 were designed to the satisfaction and personal taste of Robert L. Vesco, would in effect transform the plane into a pleasure palace for him and render it thereafter commercially useless.

(iii) It failed to disclose that the $1,000,000 spent in the acquisition and refurbishing of the plane had been expended without authorization of ICC's Board of Directors until the purported "ratification" of December 8, 1971 by which time it was a fait accompli.

(iv) It failed to set forth the termination and modification provisions of the lease with Skyways referred to above.

(v) It stated that the reason for the dividend was that "the General Aviation business did not fit into the operations of any of the reconstituted subsidiaries [of ICC]." when the real reason was to place the aviation assets under the absolute control of defendant Robert L. Vesco so that he could have the Boeing 707 for his personal use.

(h) The dividend of Fairfield General shares resulted in a spin-off of much more than $1,000,000 of ICC's former assets without putting any true value into the hands of the stockholders who received it (other than Vesco). The stock itself had little inherent

value. The principal business of the corporation was its lease with ICC and the principal use of the plane was to fly Vesco from place to place in luxury. The stock had an insubstantial market value and, unlike ICC stock, the stock of Fairfield General was not listed on any exchange.

(i) During 1971 and 1972 (and apparently up to the present), the Boeing 707 was used by Mr. Vesco and members of his family for trips to different places around the world. Most of the destinations are serviced by commercial airlines. The 707 is too large to land in small airports not so serviced.

7. The facts recited in "5" and "6" above are not controverted by the papers submitted in opposition to the instant motions.

8. The exchange of shares between ICC and defendant Fairfield General in which ICC parted with its stock in Fairfield Aviation (and with it the stock and assets of Skyways) and received in turn from Fairfield General stock in Fairfield General was a transaction in securities within the meaning of Section 10(b) of the 1934 Act in that it was allegedly authorized and entered into as part of a scheme in violation of the 1934 Act in which it was contemplated that the Fairfield General securities would be spun-off as a dividend through ICC stockholders to the public with the use of a 1933 Act prospectus.

9. Fairfield General, Fairfield Aviation and Skyways were major participants in the scheme alleged in that they were the very instruments by which ICC was looted of assets. Defendant Fairfield General, a corporation whose Board of Directors

consisted of defendants Grady, Clay, Dodd and Beatty, received, and still holds, the very assets lost by ICC in the transaction, viz, the stock of Fairfield Aviation and through it the stock of Skyways. Defendants Fairfield Aviation and Skyways are mere corporate conduits through which Fairfield General holds these assets. They are necessary parties in order for this Court to afford relief against Fairfield General.

Defendant Vesco & Co.

10. The complaint alleges that Vesco and his children transferred certain assets to Vesco & Co. From papers submitted in support of Vesco & Co.'s motion to dismiss, it appears that in July, 1972 (a time when he was under intensive SEC investigation), Vesco caused to be created defendant Vesco & Co., a Delaware corporation, and contributed 800,000 shares of ICC common stock to said corporation. The basic activity of Vesco & Co. consists of the ownership of Vesco's ICC stock. Robert Vesco is the owner of the preferred shares of Vesco & Co. His wife, Patricia J. Vesco, as custodian for their children, is the owner of all of the voting and non-voting common stock of that company. The ICC stock placed in Vesco & Co. by Vesco may be the only property from which a judgment against him may be satisfied.

11. On the papers before the Court it appears that Vesco & Co. is a corporate alter ego for defendant Robert Vesco and was created by him during and after the perpetration of the fraud charged in the complaint. Defendant Vesco was a defendant

in the action brought by the SEC and this Court had personal jurisdiction over him in that action. He did not object to the entry of the Final Judgment against ICC and has made no attempt to modify or vacate said judgment. Rather, he has attempted to attack said Final Judgment in the New Jersey courts through Vesco & Co.

Defendant Eisenhauer

12. Defendant Alwyn Eisenhauer is the principal pilot of the 707 and the personal pilot of Robert Vesco. The complaint charges Mr. Eisenhauer with aiding and abetting all of the violations alleged therein. Service of the summons and complaint upon Mr. Eisenhauer was made by the U. S. Marshal in New Jersey on June 19, 1973.

13. On March 7, 1973, plaintiff ICC had entered into an agreement with defendant Eisenhauer pursuant to which defendant Eisenhauer agreed to fly the Boeing 707 at ICC's request for all flights which ICC deemed necessary while the Boeing 707 is leased to and under the control of ICC. Pursuant thereto, plaintiff ICC instructed defendant Eisenhauer to fly the Boeing 707 to Newark and paid defendant Eisenhauer expense money to do so. Defendants Grady and Beatty wrongfully instructed defendant Eisenhauer to fly the Boeing 707 to Beirut and thence to Nassau, and defendant Eisenhauer complied. This was done secretly and without prior notice to ICC despite the fact that negotiations were then being conducted between defendants Grady, Beatty and counsel to ICC.

Necessity For Injunctive Relief
Restraining Transfer of Assets

14. Defendants Beatty and Grady have informed counsel to ICC that Skyways was attempting to sell the Boeing 707. Attempts to sell the Boeing 707 have continued to the present time. Unless this Court acts to freeze the assets involved, vis, the stock of Fairfield Aviation held by Fairfield General and the assets of Fairfield Aviation including the stock of Skyways Leasing and the Boeing 707 and defendant Vesco's stock in ICC there is a grave danger that said assets will be removed from the jurisdiction of the Court or otherwise disposed of and, therefore, there will be no assets available to give meaningful compliance to any order or judgment of the Court in enforcing the Securities Exchange Act of 1934 or for satisfaction of any money judgment recovered. In addition, it appears necessary to enjoin the transfer of the ICC stock held by Vesco & Co. in order to prevent Vesco from perpetrating further frauds by use of his ownership of what has heretofore been a controlling 25% interest in ICC.

15. Fairfield General and its subsidiaries have no assets or business except those received from ICC. They are not meaningful business entities whose day-to-day affairs would be interrupted by the injunction sought. They are merely corporate repositories of the proceeds of the transaction with ICC which is the subject of the complaint herein.

16. Vesco & Co. is a corporation created by Mr. Vesco which is owned by him, his wife and their children. It is supposedly managed and controlled by his wife and his secretary. Vesco has deposited into this shell the largest portion of his shares of ICC. Vesco & Co. is not a meaningful business entity whose day-to-day affairs would be interrupted by the injunction sought herein.

Necessity For Enjoining
State Court Actions

17. (a) In February 1973, at the demand of the SEC, this Court enjoined ICC from making any further payments pursuant to the lease with Skyways covering the Boeing 707 and no such payments were thereafter made.

(b) The Final Judgment of March 16, 1973 prohibited ICC from holding any annual meeting of stockholders without the consent of the SEC and until its proxy material, including accompanying financial information, is found by the SEC to be in accordance with the Securities Exchange Act of 1934.

18. On or about May 25, 1973, Fairfield General, Fairfield Aviation and Skyways, who appear to be dominated and controlled by Vesco and defendants Beatty, Clay, Dodd and Grady, the directors selected by him, commenced an action against ICC seeking to enforce certain air taxi and management agreements made between those companies and ICC at a time when said companies were wholly owned subsidiaries of ICC and as part of the alleged plan and conspiracy set forth above. On June 5, 1973,

Skyways caused an action to be brought in a New Jersey state court seeking to recover over $2,000,000 from ICC claimed to be due under the Boeing 707 lease.

19. To permit Fairfield General, Fairfield Aviation and Skyways to enforce the agreements with ICC - especially the lease covering the Boeing 707 - would be in effect to permit said defendants to continue to effectuate and reap the fruits of the alleged violations of the 1934 Act before this Court could finally determine this action on the merits.

20. On June 7, 1973, Vesco & Co. brought a stockholders' action in a New Jersey state court seeking to have the Court-appointed Board of Directors removed and an election of directors held and also asserting derivative claims on ICC's behalf against certain of ICC's former directors.

21. Vesco & Co.'s New Jersey action is a direct attack on this Court's Final Judgment against ICC and, in effect, asks the Courts of New Jersey to invalidate and repeal said Final Judgment. In exercise of this Court's paramount authority under the 1934 Act and at the behest of the SEC acting pursuant to the same statute, this Court appointed Special Counsel and an interim Board of Directors and expressly forbade the holding of a meeting of stockholders for the election of a new board of directors until the SEC had consented to the holding of such a meeting and cleared proxy material in accordance with the Securities Exchange Act of 1934. Vesco & Co.'s New Jersey action if it were to succeed would

violate the express provisions of this Court's judgment.

22. The derivative claims asserted in Vesco & Co.'s New Jersey action also conflict with and obstruct the effectuation of this Court's Final Judgment against ICC which was entered in lieu of the appointment of a Receiver. Rather than appointing such a Receiver, this Court appointed Special Counsel to vindicate the rights of ICC against its former directors. Had a Receiver been appointed, this Court would have had the power under 28 U.S.C. §2283 to protect and effectuate its judgment by enjoining stockholder derivative suits which tended to harass or interfere with the Receiver's work. Since the duties of Special Counsel in asserting corporate rights and pursuing corporate remedies against former directors are equivalent to those which would have been imposed on a Receiver, an injunction against conflicting derivative actions brought in the name of ICC by stockholders is as much an appropriate remedy as it would have been had a Receiver been appointed.

CONCLUSIONS OF LAW

A. ICC's motion for a preliminary injunction restraining the transfer of certain assets by defendants Fairfield General, Fairfield Aviation, Skyways, Vesco, Vesco & Co., Beatty, Grady and Eisenhauer

1. Plaintiff has demonstrated for purposes of the pending motions that the wrongdoings alleged in the complaint were accomplished by a transaction or transactions within the meaning of Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and this Court, therefore, has jurisdiction of this action under Section 27 of the 1934 Act.

2. There is a reasonable expectation that the policy of the 1934 Act will be thwarted unless the preliminary injunctive relief requested is granted. Plaintiff has presented a strong prima facie case to justify the discretionary issuance of such relief.

3. The preliminary injunctive relief requested is necessary in order to preserve the status quo pending final determination of this action.

4. Unless the preliminary injunctive relief requested is granted, plaintiff will be irreparably harmed in that any judgment or recovery by plaintiff may be rendered meaningless.

5. Defendants against whom relief is sought have failed to demonstrate any equivalent countervailing harm which would result by the granting of the preliminary injunctive relief requested.

B. ICC's motion to preliminarily enjoin prosecution of New Jersey state court actions commenced by Fairfield General and Skyways

6. Plaintiff has demonstrated for purposes of the pending motions that the wrongdoings alleged in the complaint were accomplished by a transaction or transactions within the meaning of Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and this Court, therefore, has jurisdiction of this action under Section 27 of the 1934 Act.

7. The preliminary injunctive relief requested is necessary in order to enjoin the continuation of the frauds and violations of the Securities Exchange Act of 1934 alleged in the complaint and, therefore, is expressly authorized by the said Act and is necessary in aid of the exclusive jurisdiction conferred upon this Court by said Act.

C. ICC's motion to preliminarily enjoin the prosecution of the New Jersey state court actions commenced by Vesco & Co.

8. Plaintiff has demonstrated for purposes of the pending motions that the wrongdoings alleged in the complaint were accomplished by a transaction or transactions within the meaning of Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and this Court, therefore, has jurisdiction of this action under Section 27 of the 1934 Act.

9. The action commenced by Vesco & Co. constitutes a collateral attack on the Final Judgment of Permanent Injunction and Appointment of Special Counsel and Directors entered by this Court

in the action entitled Securities and Exchange Commission v. Robert L. Vesco, et al., 72 Civ. 5001 (CES) and, therefore, the preliminary injunctive relief requested is necessary in order to protect and effectuate said judgment.

D. Motion by Vesco & Co. for dismissal of the complaint for lack of subject matter jurisdiction and lack of personal jurisdiction

10. The complaint states a claim against Vesco & Co. for violation of the 1934 Act and, therefore, this Court has subject matter jurisdiction with respect to said claims.

11. Proper service having been made upon Vesco & Co., this Court has jurisdiction over its person.

E. Motion by defendant Eisenhauer to dismiss the complaint for lack of subject matter jurisdiction and lack of personal jurisdiction

12. The complaint states a claim against defendant Eisenhauer for violation of the 1934 Act and, therefore, this Court has subject matter jurisdiction with respect to said claims.

13. Proper service having been made upon defendant Eisenhauer, this Court has jurisdiction over his person.

Proposed Findings of Fact 502a
Dated: New York, New York

July 2, 1973

DAVID M. BUTOWSKY, ESQ.
230 Park Avenue
New York, New York
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SHEA GOULD CLIMENKO & KRAMER

By: _____
A Member of the Firm
330 Madison Avenue
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330 MADISON AVENUE
NEW YORK, N. Y. 10017
MO 1-3200

ATTORNEYS FOR Plaintiff

Plaintiff's proposed findings of fact and conclusions of law in support of its motion for a preliminary injunction and in opposition to the motions of certain defendants to dismiss the complaint, dated July 2, 1973. (As adopted by the District Court on or about July 3, 1973.)

(504a - 524a)

U.S. DISTRICT COURT
FILED
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S.D. OF N.Y.

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(c) Between June 1971 and December 8, 1971, Vesco caused ICC to advance approximately $1,000,000 toward the cost of acquiring the Boeing 707 and the refurbishment and improvement of that plane. During the three months ended September 30, 1971, Skyways leased the plane to ICC at a total cost of $439,000. By lease dated as of October 1, 1971, ICC agreed to lease the plane from Skyways for a period of five years at an approximate gross rental of $3,500,000, the larger portions of which were to be paid as monthly rental during the first two years of the lease ($100,000 a month for the first three months, $83,000 per month for the next twelve months). Under the terms of the lease (i) ICC was responsible for service, maintenance, overhaul scheduling and personnel; (ii) Skyways had the absolute right to terminate the lease any time it wished to sell or transfer ownership of the plane; and (iii) all improvements to the plane paid for by ICC became the proper of Skyways.

(d) The "refurbishing" of the airplane was such as to make it suitable only as an entertainment and transp tation center for Mr. Vesco personally. Its seating capac was reduced from 150 passengers to approximately 33; enter tainment facilities such as a discotheque, dance floor, hi fi stereo, sauna and other amenities were installed

(e) In November 1971, as part of the aforesaid plan, defendant Vesco caused still another corporation to be organized. This corporation was Fairfield General. It had no assets. At an ICC Board of Directors meeting held December 8, 1971, the ICC Board of Directors adopted resolutions purporting to accomplish the following:

(i) Transfer of all of the stock of Fairfield Aviation owned by ICC to the newly organized Fairfield General. This transfer was made in exchange for stock of the newly organized Fairfield General.

(ii) Declare a purported dividend by ICC to its own stockholders (of which Robert L. Vesco personally owned 25%) of the stock of Fairfield General. This "dividend was accompanied by a 1933 Act registration and prospectus which accomplished an instantaneous "spin-off" launching Fairfield General as a separately publicly held and traded corporation.

By the foregoing means ICC was divested of its ownership and control over Fairfield Aviation, its aviation business, Skyways and the Boeing 707. A new corporate complex was created wholly apart from ICC in which all of the Fairfield Aviation assets, including the Boeing 707, were held. The said complex was controlled by Vesco through his 25% ownership of its stock and the installation of a Board of Directors of his choosing prior to the spin-off, consisting of his co-conspirator defendants Grady, Clay, Dodd and Beatty. This new corporate complex was now the beneficiary of the funds

expended by ICC for the acquisition and improvement of the Boeing 707 and was the lessor under the lease, a lease under which ICC had spent and would spend hundreds of thousands of dollars as escalated rentals during the early months and to pay for the improvements to the Boeing 707, but which provided that if the plane were sold or transferred, ICC's rights as lessee could be terminated on five days notice and would forfeit all of the expenditures it had made for improvements.

(f) Two former directors Laurence Richardson, Jr. and Malcolm McAlpin have given sworn statements in this Court that their consent to the aforesaid exchange and "dividend" was secured by misstatements of fact and omissions of material statements of facts. Principal among these are that:

(i) They were not told the truth about the amount spent on refurbishing the plane, or about the sumptuous nature and extent of the renovations.

(ii) They were not told the onerous terms of the lease to Skyways.

(iii) They were told that the plane would be used and paid for by I.O.S. and would not be an expense to ICC, or used by Mr. Vesco for his personal transportation.

Rider A

The dividend in kind was paid by The Marine Midland Bank by mailing it from its office in New York. Presumably, the prospectus which accompanied the dividend to the stockholders was mailed from New York.

submitted on this motion and from the prospectus itself that said prospectus contained a number of false and misleading statements, among which were the following:

(i) It stated that the cost of refurbishing the plane was $350,000 when, in fact, it was more than $600,000.

(ii) It concealed the fact that the improvements to the Boeing 707 were designed to the satisfaction and personal taste of Robert L. Vesco, would in effect transform the plane into a pleasure palace for him and render it thereafter commercially useless.

(iii) It failed to disclose that the $1,000,000 spent in the acquisition and refurbishing of the plane had been expended without authorization of ICC's Board of Directors until the purported "ratification" of December 8, 1971 by which time it was a fait accompli.

(iv) It failed to set forth the termination and modification provisions of the lease with Skyways referred to above.

(v) It stated that the reason for the dividend was that "the General Aviation business did not fit into the operations of any of the reconstituted subsidiaries [of ICC]." when the real reason was to place the aviation assets under the absolute control of defendant Robert L. Vesco so that he could have the Boeing 707 for his personal use.

(h) The dividend of Fairfield General shares resulted in a spin-off of much more than $1,000,000 of ICC's former assets without putting any true value into the hands of the stockholders who received it (other than Vesco). The stock itself had little inherent

value. The principal business of the corporation was its lease with ICC and the principal use of the plane was to fly Vesco from place to place in luxury. The stock had an insubstantial market value and, unlike ICC stock, the stock of Fairfield General was not listed on any exchange.

(i) During 1971 and 1972 (and apparently up to the present), the Boeing 707 was used by Mr. Vesco and members of his family for trips to different places around the world. Most of the destinations are serviced by commercial airlines. The 707 is too large to land in small airports not so serviced.

7. The facts recited in "5" and "6" above are not controverted by the papers submitted in opposition to the instant motions.

8. The exchange of shares between ICC and defendant Fairfield General in which ICC parted with its stock in Fairfield Aviation (and with it the stock and assets of Skyways) and received in turn from Fairfield General stock in Fairfield General was a transaction in securities within the meaning of Section 10 of the 1934 Act in that it was allegedly authorized and entered into as part of a scheme in violation of the 1934 Act in which it was contemplated that the Fairfield General securities would be spun-off as a dividend through ICC stockholders to the public with the use of a 1933 Act prospectus.

9. Fairfield General, Fairfield Aviation and Skyways were major participants in the scheme alleged in that they were the very instruments by which ICC was looted of assets. Defendant Fairfield General, a corporation whose Board of Directors

consisted of defendants Grady, Clay, Dodd and Beatty, received, and still holds, the very assets lost by ICC in the transaction, viz, the stock of Fairfield Aviation and through it the stock of Skyways. Defendants Fairfield Aviation and Skyways are mere corporate conduits through which Fairfield General holds these assets. They are necessary parties in order for this Court to afford relief against Fairfield General.

Defendant Vesco & Co.

10. The complaint alleges that Vesco and his children transferred certain assets to Vesco & Co. From papers submitted in support of Vesco & Co.'s motion to dismiss, it appears that in July, 1972 (a time when he was under intensive SEC investigation), Vesco caused to be created defendant Vesco & Co., a Delaware corporation, and contributed 800,000 shares of ICC common stock to said corporation. The basic activity of Vesco & Co. consists of the ownership of Vesco's ICC stock. Robert Vesco is the owner of the preferred shares of Vesco & Co. His wife, Patricia J. Vesco, as custodian for their children, is the owner of all of the voting and non-voting common stock of that company. The ICC stock placed in Vesco & Co. by Vesco may be the only property from which a judgment against him may be satisfied.

11. On the papers before the Court it appears that Vesco & Co. is a corporate alter ego for defendant Robert Vesco and was created by him during and after the perpetration of the fraud charged in the complaint. Defendant Vesco was a defendant

in the action brought by the SEC and this Court had personal jurisdiction over him in that action. He did not object to the entry of the Final Judgment against ICC and has made no attempt to modify or vacate said judgment. Rather, he has attempted to attack said Final Judgment in the New Jersey courts through Vesco & Co.

Defendant Eisenhauer

12. Defendant Alwyn Eisenhauer is the principal pilot of the 707 and the personal pilot of Robert Vesco. The complaint charges Mr. Eisenhauer with aiding and abetting all of the violations alleged therein. Service of the summons and complaint upon Mr. Eisenhauer was made by the U. S. Marshal in New Jersey on June 19, 1973.

13. On March 7, 1973, plaintiff ICC had entered into an agreement with defendant Eisenhauer pursuant to which defendant Eisenhauer agreed to fly the Boeing 707 at ICC's request for all flights which ICC deemed necessary while the Boeing 707 is leased to and under the control of ICC. Pursuant thereto, plaintiff ICC instructed defendant Eisenhauer to fly the Boeing 707 to Newark and paid defendant Eisenhauer expense money to do. Defendants Grady and Beatty wrongfully instructed defendant Eisenhauer to fly the Boeing 707 to Beirut and thence to Nassau and defendant Eisenhauer complied. This was done secretly and without prior notice to ICC despite the fact that negotiations were then being conducted between defendants Grady, Beatty and counsel to ICC.

Necessity For Injunctive Relief
Restraining Transfer of Assets

14. Defendants Beatty and Grady have informed counsel to ICC that Skyways was attempting to sell the Boeing 707. Attempts to sell the Boeing 707 have continued to the present time. Unless this Court acts to freeze the assets involved, viz, the stock of Fairfield Aviation held by Fairfield General and the assets of Fairfield Aviation including the stock of Skyways Leasing and the Boeing 707 and defendant Vesco's stock in ICC there is a grave danger that said assets will be removed from the jurisdiction of the Court or otherwise disposed of and, therefore, there will be no assets available to give meaningful compliance to any order or judgment of the Court in enforcing the Securities Exchange Act of 1934 or for satisfaction of any money judgment recovered. In addition, it appears necessary to enjoin the transfer of the ICC stock held by Vesco & Co. in order to prevent Vesco from perpetrating further frauds by use of his ownership of what has heretofore been a controlling 25% interest in ICC.

15. Fairfield General and its subsidiaries have no assets or business except those received from ICC. They are not meaningful business entities whose day-to-day affairs would be interrupted by the injunction sought. They are merely corporate repositories of the proceeds of the transaction with ICC which is the subject of the complaint herein.

16. Vesco & Co. is a corporation created by Mr. Vesco which is owned by him, his wife and their children. It is supposedly managed and controlled by his wife and his secretary. Vesco has deposited into this shell the largest portion of his shares of ICC. Vesco & Co. is not a meaningful business entity whose day-to-day affairs would be interrupted by the injunction sought herein.

Necessity For Enjoining
State Court Actions

17. (a) In February 1973, at the demand of the SEC, this Court enjoined ICC from making any further payments pursuan to the lease with Skyways covering the Boeing 707 and no such pa ments were thereafter made.

(b) The Final Judgment of March 16, 1973 prohibi ICC from holding any annual meeting of stockholders without the consent of the SEC and until its proxy material, including accom panying financial information, is found by the SEC to be in acco ance with the Securities Exchange Act of 1934.

18. On or about May 25, 1973, Fairfield General, Fairfield Aviation and Skyways, who appear to be dominated and controlled by Vesco and defendants Beatty, Clay, Dodd and Grady the directors selected by him, commenced an action against ICC seeking to enforce certain air taxi and management agreements made between those companies and ICC at a time when said compan ies were wholly owned subsidiaries of ICC and as part of the alleged plan and conspiracy set forth above. On June 5, 1973,

Skyways caused an action to be brought in a New Jersey state court seeking to recover over $2,000,000 from ICC claimed to be due under the Boeing 707 lease.

19. To permit Fairfield General, Fairfield Aviation and Skyways to enforce the agreements with ICC - especially the lease covering the Boeing 707 - would be in effect to permit said defendants to continue to effectuate and reap the fruits of the alleged violations of the 1934 Act before this Court could finally determine this action on the merits.

20. On June , 1973, Vesco & Co. brought a stockholders' action in a New Jersey state court seeking to have the Court-appointed Board of Directors removed and an election of directors held and also asserting derivative claims on ICC's behalf against certain of ICC's former directors.

21. Vesco & Co.'s New Jersey action is a direct attack on this Court's Final Judgment against ICC and, in effect, asks the Courts of New Jersey to invalidate and repeal said Final Judgment. In exercise of this Court's paramount authority under the 1934 Act and at the behest of the SEC acting pursuant to the same statute, this Court appointed Special Counsel and an interim Board of Directors and expressly forbade the holding of a meeting of stockholders for the election of a new board of directors until the SEC had consented to the holding of such a meeting and cleared proxy material in accordance with the Securities Exchange Act of 1934. Vesco & Co.'s New Jersey action if it were to succeed would

violate the express provisions of this Court's judgment.

22. The derivative claims asserted in Vesco & Co.'s New Jersey action also conflict with and obstruct the effectua- tion o this Court's Final Judgment against ICC which was ente in lieu of the appointment of a Receiver. Rather than appoint such a Receiver, this Court appointed Special Counsel to vindi the rights of ICC against its former directors. Had a Receive been appointed, this Court would have had the power under 28 U §2283 to protect and effectuate its judgment by enjoining stoc holder derivative suits which tended to harass or interfere wi the Receiver's work. Since the duties of Special Counsel in asserting corporate rights and pursuing corporate remedies aga former directors are equivalent to those which would have been imposed on a Receiver, an injunction against conflicting deriv tive actions brought in the name of ICC by stockholders is as an appropriate remedy as it would have been had a Receiver be appointed.

CONCLUSIONS OF LAW

A. ICC's motion for a preliminary injunction restraining the transfer of certain assets by defendants Fairfield General, Fairfield Aviation, Skyways, Vesco, Vesco & Co., Beatty, Grady and Eisenhauer

1. Plaintiff has demonstrated for purposes of the pending motions that the wrongdoings alleged in the complaint were accomplished by a transaction or transactions within the meaning of Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and this Court, therefore, has jurisdiction of this action under Section 27 of the 1934 Act.

2. There is a reasonable expectation that the policy of the 1934 Act will be thwarted unless the preliminary injunctive relief requested is granted. Plaintiff has presented a strong prima facie case to justify the discretionary issuance of such relief.

3. The preliminary injunctive relief requested is necessary in order to preserve the status quo pending final determination of this action.

4. Unless the preliminary injunctive relief requested is granted, plaintiff will be irreparably harmed in that any judgment or recovery by plaintiff may be rendered meaningless.

5. Defendants against whom relief is sought have failed to demonstrate any equivalent countervailing harm which would result by the granting of the preliminary injunctive relief requested.

B. ICC's motion to preliminarily enjoin prosecution of New Jersey state court actions commenced by Fairfield General and Skyways

6. Plaintiff has demonstrated for purposes of the pending motions that the wrongdoings alleged in the complaint were accomplished by a transaction or transactions within the meaning of Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and this Court, therefore, has jurisdiction of this action under Section 27 of the 1934 Act.

7. The preliminary injunctive relief requested is necessary in order to enjoin the continuation of the frauds and violations of the Securities Exchange Act of 1934 alleged in the complaint and, therefore, is expressly authorized by the said Act and is necessary in aid of the exclusive jurisdiction conferred upon this Court by said Act.

C. ICC's motion to preliminarily enjoin the prosecution of the New Jersey state court actions commenced by Vesco & Co.

8. Plaintiff has demonstrated for purposes of the pending motions that the wrongdoings alleged in the complaint were accomplished by a transaction or transactions within the meaning of Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and this Court, therefore, has jurisdiction of this action under Section 27 of the 1934 Act.

9. The action commenced by Vesco & Co. constitutes a collateral attack on the Final Judgment of Permanent Injunction and Appointment of Special Counsel and Directors entered by this Court

in the action entitled Securities and Exchange Commission v. [illegible] F. Vesco, et al., 72 Civ. 5001 (CES) and, therefore, the preliminary injunctive relief requested is necessary in order to protect and effectuate said judgment.

D. Motion by Vesco & Co. for dismissal of the complaint for lack of subject matter jurisdiction and lack of personal jurisdiction

10. The complaint states a claim against Vesco & Co. for violation of the 1934 Act and, therefore, this Court has subject matter jurisdiction with respect to said claims.

11. Proper service having been made upon Vesco & Co., this Court has jurisdiction over its person.

E. Motion by defendant Eisenhauer to dismiss the complaint for lack of subject matter jurisdiction and lack of personal jurisdiction

12. The complaint states a claim against defendant Eisenhauer for violation of the 1934 Act and, therefore, this Court has subject matter jurisdiction with respect to said claims.

13. Proper service having been made upon defendant Eisenhauer, this Court has jurisdiction over his person.

Dated: New York, New York

July 2, 1973

DAVID M. BUTOWSKY, ESQ.
230 Park Avenue
New York, New York
725-5360

SHEA GOULD CLIMENKO & KRAMER

By: _____
A Member of the Firm
330 Madison Avenue
New York, New York
661-3200

Attorneys for Plaintiff

Order of Judge Charles E. Stewart dated July 3, 1973, enjoining pendente lite, Skyways Leasing Corp., Fairfield General Corp., Fairfield Aviation Corp., Frank G. Beatty, Joel Grady and Alwyn Eisenhauer, enjoining Vesco Co., Inc., its officers, directors and agents, denying the Motions of Defendants, Vesco & Co., Inc., Fairfield General Corp., Fairfield Aviation Corp., and Skyways Leasing Corp., and denying the Motion of defendant Eisenhauer. (Copy obtained from Clerk of District Court on July 5, 1973.)

(525a - 531a)

U.S. DISTRICT COURT
FILED
JUL 5 1973
S. D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, : 73 Civ. 2518 (CES)

-against- :

ORDER

ROBERT L. VESCO, et al., :

Defendants. :

- -x

Plaintiff International Controls Corp., having moved this Court by Order to Show Cause dated June 8, 1973 for an order:

1. Enjoining, pendente lite, defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation, their directors, officers, agents, servants, employees and attorneys and those acting in concert with them, from prosecuting or taking any steps in furtherance of (i) an action entitled "Fairfield General Corporation, a New Jersey corporation, Fairfield Aviation Corporation, a New Jersey corporation, and Skyways Leasing Corporation, a New Jersey corporation, plaintiffs, v. International Controls Corporation, a corporation of the State of Florida, defendant" pending in the Superior Court of New Jersey Chancery Division, Essex County, and (ii) an action entitled "Skyways Leasing Corporation, a New Jersey corporation v. International Controls Corporation, a Florida corporation", Docket No. L-28210-73, pending in the Superior Court of New Jersey, Law Division, Essex

County, pending final determination of International Controls Corp. v. Robert L. Vesco et al; and

2. Enjoining, pendente lite, defendants Robert L. Vesco, Vesco & Co., Skyways Leasing Corporation, Fairfield General Corporation, Fairfield Aviation Corporation, Frank G. Beatty, Joel Grady and Alwyn Eisenhauer, from, directly or indirectly, using, selling, encumbering or otherwise disposing of the following properties without the approval of the Court:

(i) 846,380 shares of common stock of International Controls Corp. held of record by defendant Vesco & Co.;

(ii) 122,463 shares of common stock of International Controls Corp. held of record by defendant Robert L. Vesco;

(iii) common stock of defendant Fairfield General Corporation owned or controlled by defendants Robert L. Vesco and Vesco & Co.;

(iv) capital stock of defendant Fairfield Aviation Corporation, a wholly-owned subsidiary of defendant Fairfield General Corporation;

(v) capital stock of defendant Skyways Leasing Corporation, a wholly-owned subsidiary of defendant Fairfield Aviation Corporation;

(vi) a Boeing 707 (registered number N11RV) title to which is in defendant Skyways Leasing Corporation, or the proceeds of the sale of the Boeing 707 if it has already been sold, or any other moneys or assets of defendants Fairfield General Corporation, Fairfield

Aviation Corporation or Skyways Leasing Corporation; and

(vii) any and all other assets or property of such companies.

and by Order to Show Cause dated June 22, 1973 for an order enjoining, pendente lite, defendant Vesco & Co., Inc., its directors, officers, agents, servants, employees and attorneys and those acting concert with it, from prosecuting or taking any steps in furtherance of an action entitled "Vesco & Co., Inc. v. Lawrence B. Richardson, Jr., et al.", Docket No. C-3448-72, pending in the Superior Court of New Jersey Chancery Division, Bergen County, pending final determination of the within action.

AND defendant Vesco & Co., Inc. having moved this Court by Notice of Motion dated June 29, 1973 for an order dismissing the complaint and all proceedings in the within action as to said defendant for lack of jurisdiction, insufficiency of service of process and insufficiency of the complaint;

AND defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation having moved this Court orally (and by memorandum of law in support thereof) for an order dismissing the complaint and all proceedings against them in the within action for lack of jurisdiction, insufficiency of service of process and insufficiency of the complaint;

AND defendant Alwyn Eisenhauer, having moved this Court by Notice of Motion (undated) for an order quashing service upon said defendant in the within action;

NOW, upon reading the affidavits of David M. Butowsky, sworn to June 7, June 18 and June 22, 1973, of Allen M. Shinn, sworn to June 6, 1973, of Laurence Richardson, Jr., sworn to June 7, 1973 and Malcolm McAlpin, sworn to June 7, 1973 in support of plaintiff's motions and the affidavit of Joel M. Grady, sworn to June 26, 1973 in opposition to plaintiff's motion; the affidavit of Milton H. Stern sworn to June 12, 1973 in support of Vesco & Co. Inc.'s motion; and the affidavit of Howard A. Singer, sworn to June

1973 in support of defendant Eisenhauer's motion; and said motions having been heard on June 27, 1973 before the Hon. Charles E. Stewart, and upon the opinion of the Court dated , 1973, it is hereby

ORDERED, that defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation, their directors, officers, agents, servants, employees and attorneys and those acting in concert with them are enjoined, pendente lite, from prosecuting or taking any steps in furtherance of (i) an action entitled "Fairfield General Corporation, a New Jersey corporation, and Skyways Leasing Corporation, a New Jersey corporation, Plaintiffs, v. International Controls Corporation, a corporation of the State of Florida, Defendant" pending in the Superior Court of New Jersey, Chancery Division, Essex County, and (ii) an action entitled "Skyways Leasing Corporation, a New Jersey corporation v. International Controls Corporation, a Florida corporation", Docket No. L-28210-73, pending in the Superior Court of New Jersey, Law Division, Essex County, pending final determination of the within action, and it is further

ORDERED, that defendants Skyways Leasing Corporation, Fairfield General Corporation, Fairfield Aviation Corporation, Frank G. Beatty, Joel Grady and Alwyn Eisenhauer are enjoined, pendente lite, from directly or indirectly, using, selling, encumbering, transferring or otherwise disposing of the following properties without the approval of the Court:

(i) capital stock of defendant Fairfield Aviation Corporation, a wholly owned subsidiary of defendant Fairfield General Corporation;

(ii) capital stock of defendant Skyways Leasing Corporation, a wholly owned subsidiary of defendant Fairfield

Aviation Corporation;

(iii) a Boeing 707 (registered number N11RV) title to which is in defendant Skyways Leasing Corporation, or the proceeds of the sale of the Boeing 707 if it has already been sold, or any other moneys or assets of defendants Fairfield General Corporation, Fairfield Aviation Corporation or Skyways Leasing Corporation;

and it is further

ORDERED, that defendants Robert Vesco and Vesco & Co., Inc. are enjoined, pendente lite, from directly or indirectly using, selling, encumbering, transferring or otherwise disposing of:

(i) 846,380 shares of common stock of International Controls Corp. held of record by defendant Vesco & Co.;

(ii) 122,463 shares of common stock of International Controls Corp. held of record by defendant Robert L. Vesco;

(iii) common stock of defendant Fairfield General Corporation owned or controlled by defendants Robert L. Vesco and Vesco & Co.;

and it is further

ORDERED, that defendant Vesco & Co., Inc., its directors, officers, agents, servants, employees and attorneys and those acting in concert with it, are enjoined, pendente lite, from prosecuting or taking any steps in furtherance of an action entitled "Vesco & Co., Inc. v. Lawrence B. Richardson, Jr., et al.", Docket No. C-3488-72, pending in the Superior Court of New Jersey Chancery Division, Bergen County, pending final determination of the within action; and it is further

ORDERED, that the motions of defendant Vesco & Co., Inc. Fairfield General Corporation, Fairfield Aviation Corporation and

Skyways Leasing Corporation to dismiss the complaint and all proceedings in the within action, be, and the same hereby are denied in all respects; and it is further

ORDERED, that the motion of defendant Alwyn Eisenhauer to quash service in the within action be, and the same hereby is denied in all respects.

Dated: New York, New York
July 3, 1973

Charles E. Stewart JR
U. S. D. J.

Order of Judge Charles E. Stewart dated July 3, 1973, enjoining pendente lite, Skyways Leasing Corp., Fairfield General Corp., Fairfield Aviation Corp., Frank G. Beatty, Joel Grady and Alwyn Eisenhauer, enjoining Vesco & Co., Inc., its officers, directors and agents, denying the Motions of Defendants, Vesco & Co., Inc., Fairfield General Corp., Fairfield Aviation Corp., and Skyways Leasing Corp., and denying the Motion of defendant Eisenhauer. (Copy containing Judge Stewart's handwritten additions received by mail on July 9, 1973, from counsel for plaintiff.)

(532a - 538a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
JUL 5 1973
S. D. OF N. Y.

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

73 Civ. 2518 (CES)

ORDER

Plaintiff International Controls Corp., having moved this Court by Order to Show Cause dated June 8, 1973 for an order:

1. Enjoining, pendente lite, defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation, their directors, officers, agents, servants, employees and attorneys and those acting in concert with them, from prosecuting or taking any steps in furtherance of (i) an action entitled "Fairfield General Corporation, a New Jersey corporation, Fairfield Aviation Corporation, a New Jersey corporation, and Skyways Leasing Corporation, a New Jersey corporation, plaintiffs, v. International Controls Corporation, a corporation of the State of Florida, defendant" pending in the Superior Court of New Jersey Chancery Division, Essex County, and (ii) an action entitled "Skyways Leasing Corporation, a New Jersey corporation v. International Controls Corporation, a Florida corporation", Docket No. L-28210-73, pending in the Superior Court of New Jersey, Law Division, Essex

County, pending final determination of International Controls Corp. v. Robert L. Vesco et al; and

2. Enjoining, pendente lite, defendants Robert L. Vesco, Vesco & Co., Skyways Leasing Corporation, Fairfield General Corporation, Fairfield Aviation Corporation, Frank G. Beatty, Joel Grady and Alwyn Eisenhauer, from, directly or indirectly, using, selling, encumbering or otherwise disposing of the following properties without the approval of the Court:

(i) 846,380 shares of common stock of International Controls Corp. held of record by defendant Vesco & Co.;

(ii) 122,463 shares of common stock of International Controls Corp. held of record by defendant Robert L. Vesco;

(iii) common stock of defendant Fairfield General Corporation owned or controlled by defendants Robert L. Vesco and Vesco & Co.;

(iv) capital stock of defendant Fairfield Aviation Corporation, a wholly-owned subsidiary of defendant Fairfield General Corporation;

(v) capital stock of defendant Skyways Leasing Corporation, a wholly-owned subsidiary of defendant Fairfield Aviation Corporation;

(vi) a Boeing 707 (registered number N11RV) title to which is in defendant Skyways Leasing Corporation, or the proceeds of the sale of the Boeing 707 if it has already been sold, or any other moneys or assets of defendants Fairfield General Corporation, Fairfield

Aviation Corporation or Skyways Leasing Corporation; and

(vii) any and all other assets or property of such companies.

and by Order to Show Cause dated June 22, 1973 for an order enjoining, pendente lite, defendant Vesco & Co., Inc., its directors, officers, agents, servants, employees and attorneys and those acting concert with it, from prosecuting or taking any steps in furtherance of an action entitled "Vesco & Co., Inc. v. Lawrence B. Richardson, Jr., et al.", Docket No. C-3448-72, pending in the Superior Court of New Jersey Chancery Division, Bergen County, pending final determination of the within action.

AND defendant Vesco & Co., Inc. having moved this Court by Notice of Motion dated June 29, 1973 for an order dismissing the complaint and all proceedings in the within action as to said defendant for lack of jurisdiction, insufficiency of service of process and insufficiency of the complaint; .

AND defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation having moved this Court orally (and by memorandum of law in support thereof) for an order dismissing the complaint and all proceedings against them in the within action for lack of jurisdiction, insufficiency of service of process and insufficiency of the complaint;

AND defendant Alwyn Eisenhauer, having moved this Court by Notice of Motion (undated) for an order quashing service upon said defendant in the within action;

NOW, upon reading the affidavits of David M. Butowsky, sworn to June 7, June 18 and June 22, 1973, of Allen M. Shinn, sworn to June 6, 1973, of Laurence Richardson, Jr., sworn to June 7, 1973 and Malcolm McAlpin, sworn to June 7, 1973 in support of plaintiff's motions and the affidavit of Joel M. Grady, sworn to June 26, 1973 in opposition to plaintiff's motion; the affidavit of Milton H. Stern sworn to June 12, 1973 in support of Vesco & Co., Inc.'s motion; and the affidavit of Howard ... Singer, sworn to June 2,

1973 in support of defendant Eisenhauer's motion; and said motions having been heard on June 27, 1973 before the Hon. Charles E. Stewart, and upon the ~~opinion of the Court filed~~ attached proposed findings of fact and conclusions of law dated July 2, 1973, adopted by the Court and incorporated in this order, it is hereby

ORDERED, that defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation, their directors, officers, agents, servants, employees and attorneys and those acting in concert with them are enjoined, pendente lite, from prosecuting or taking any steps in furtherance of (i) an action entitled "Fairfield General Corporation, a New Jersey corporation, and Skyways Leasing Corporation, a New Jersey corporation, Plaintiffs, v. International Controls Corporation, a corporation of the State of Florida, Defendant" pending in the Superior Court of New Jersey, Chancery Division, Essex County, and (ii) an action entitled "Skyways Leasing Corporation, a New Jersey corporation v. International Controls Corporation, a Florida corporation", Docket No. L-26210-73, pending in the Superior Court of New Jersey, Law Division, Essex County, pending final determination of the within action, and it is further

ORDERED, that defendants Skyways Leasing Corporation, Fairfield General Corporation, Fairfield Aviation Corporation, Frank G. Beatty, Joel Grady and Alwyn Eisenhauer are enjoined, pendente lite, from directly or indirectly, using, selling, encumbering, transferring or otherwise disposing of the following properties without the approval of the Court:

(i) capital stock of defendant Fairfield Aviation Corporation, a wholly owned subsidiary of defendant Fairfield General Corporation;

(ii) capital stock of defendant Skyways Leasing Corporation, a wholly owned subsidiary of defendant Fairfield

Aviation Corporation;

(iii) a Boeing 707 (registered number N11RV) title to which is in defendant Skyways Leasing Corporation, or the proceeds of the sale of the Boeing 707 if it has already been sold, or any other moneys or assets of defendants Fairfield General Corporation, Fairfield Aviation Corporation or Skyways Leasing Corporation;

and it is further

ORDERED, that defendants Robert Vesco and Vesco & Co., Inc. are enjoined, pendente lite, from directly or indirectly using, selling, encumbering, transferring or otherwise disposing of:

(i) 846,380 shares of common stock of International Controls Corp. held of record by defendant Vesco & Co.;

(ii) 122,463 shares of common stock of International Controls Corp. held of record by defendant Robert L. Vesco;

(iii) common stock of defendant Fairfield General Corporation owned or controlled by defendants Robert L. Vesco and Vesco & Co.;

and it is further

ORDERED, that defendant Vesco & Co., Inc., its directors, officers, agents, servants, employees and attorneys and those acting in concert with it, are enjoined, pendente lite, from prosecuting or taking any steps in furtherance of an action entitled "Vesco & Co., Inc. v. Lawrence B. Richardson, Jr., et al.", Docket No. C-3488-72, pending in the Superior Court of New Jersey, Chancery Division, Bergen County, pending final determination of the within action; and it is further

ORDERED, that the motions of defendant Vesco & Co., Inc., Fairfield General Corporation, Fairfield Aviation Corporation and

Skyways Leasing Corporation to dismiss the complaint and all proceedings in the within action, be, and the same hereby are denied in all respects; and it is further

ORDERED, that the motion of defendant Alwyn Eisenhauer to quash service in the within action be, and the same hereby is denied in all respects.

Dated: New York, New York

July 3, 1973

Charles E. Stewart, Jr.
U. S. D. J.

Letter from Hannoch, Weisman, Stern & Besser, Esqs.,
to Judge Charles E. Stewart, dated July 9, 1973.

(539a - 546a)

Letter Memorandum

540a

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(AREA CODE 201)

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CHARLES S. DUNETZ
GARY S. FREEDMAN
JEFFREY M. GARROD

July 9, 1973

REFER TO FILE NO.

1109-15

Honorable Charles E. Stewart
Judge, United States District Court
Federal Courthouse
Room 2602
Foley Square
New York, New York

Re: International Controls Corp. v. Vesco, et al
(73 Civ. 2518 [CES])

Dear Judge Stewart:

I am writing to Your Honor in advance of our appearance this afternoon at 3 p.m. in connection with our application for reconsideration and clarification of your apparent decisions of July 3, 1973, relating to the above-captioned matter and particularly as to our client, Vesco & Co., Inc.

We must state at the outset that we are shocked at the procedural turns and twists which this case has taken to date. While our objections to the Court's decision encompass the substantive determinations as well, we cannot help but focus upon what I respectfully consider to be the gross violations of procedural due process of law which have occurred

in this matter.

From the very outset of these proceedings, the basic procedural rights of defendant, Vesco & Co., Inc., have been ignored by the plaintiff. The plaintiff first appeared before this Court on or about June 7, and secured a temporary restraining order against the use, disposition, etc., of any assets of Vesco & Co., Inc. This appearance was made without any notice to Vesco & Co., Inc., or its attorneys, although plaintiff's counsel well knew that this firm represented Vesco & Co., Inc. Despite this lack of notice, which represented a flagrant violation of F.R.C.P. 65(b), Your Honor granted the above-mentioned temporary restraining order and, at no time, was anything said to our knowledge by the Court to its own appointed counsel regarding this breach.

To compound this initial situation, an order to show cause, continuing these restraints, set a return day of June 13 for a hearing as to further injunctive relief directed against, inter alia, Vesco & Co., Inc. This very order, however, was defective, for it directed only that Fairfield General and Skyways show cause on June 13. Despite the fact that injunctive relief was also sought against Vesco & Co., Inc., our client's name was not mentioned among those ordered to show cause on the above date.

On June 27, 1973, Your Honor heard oral argument on the various motions before the Court, namely, the order to show cause of June 8, 1973, why, inter alia, Vesco & Co., Inc. should not be preliminarily enjoined from using or transferring any of its assets, the return date of the order to show cause of June 22, 1973, why Vesco & Co., Inc., et al, should not be preliminarily enjoined from further prosecuting the New Jersey state action of "Vesco & Co., Inc. v. Lawrence B. Richardson, Jr., et al", and the motions of Vesco & Co., Inc. to dismiss the complaint against them for lack of subject matter jurisdiction, lack of personal jurisdiction, insufficiency of process, and/or failure to state a claim upon which relief can be granted. Because of certain time pressures on Your Honor, oral argument was not completed on June 27, but rather Your Honor, after colloquy with counsel, requested supplementary memoranda to be submitted to the Court no later than noon of Friday, June 29, with the understanding that a decision would be rendered on Monday, July 2. Such memoranda were submitted by both counsel for plaintiff and by this firm as counsel for Vesco & Co., Inc.

Despite these specific instructions to counsel, I learned on Tuesday, July 3, that David M. Butowsky, special counsel for ICC, had submitted an additional memoranda to Your Honor on Monday, July 2, 1973.

Of even more importance, however, on Thursday, July 5, I learned that counsel for plaintiff, ICC, had apparently also on July 2, 1973, submitted to this Court "Proposed Findings of Fact and Conclusions of Law", as well as drafts of two proposed orders. This step was taken without any prior notice or consultation with this firm, or to my knowledge, with any of the other named defendants; and the Court at no time advised us that it wished to have, or would even consider, such proposed findings or conclusions. We were, to say the least, surprised to learn of their submission, particularly when they were apparently hand-delivered to the Court on July 3 and placed in the mail (ordinary mail) to us that date so that we would not receive them until at least July 5, which is what occurred.

We were even more astounded to learn, on Thursday, July 5, that Your Honor had signed with substantially no change or alteration, and no opportunity whatsoever for hearing our position, all of the documents submitted by plaintiff on Monday, July 2, and apparently incorporated the "Proposed Findings of Fact and Conclusions of Law" into the signed orders.

I respectfully suggest to Your Honor that the above-detailed series of events would seem to abrogate accepted standards of fair play and due process of law. Established

common law, statutory, and constitutional principles of due process have seemingly been abandoned in this case amidst the large number of charges hurled at the various defendants by plaintiff, ICC. When I indicated previously that this proceeding threatened to take on all of the earmarks of a unilateral investigatory rather than a judicial proceeding, I was hopeful that its direction would change. The above course of events have demonstrated, I fear, (and I say this with full respect and consideration for the Court and its processes) that our most dire apprehensions have been realiz

As if the procedural deprivations were not enough, our client has been seriously prejudiced substantively by what has happened. Plaintiff's Proposed Findings of Fact and Conclusions of Law merely parrot the unsubstantiated and conclusory allegations in plaintiff's complaint and supporting papers. Statements in that document are offered as "findings of fact" which have not been proven in this case, on which no evidence has been taken, which at best are repetitive of general allegations in Mr. Butowsky's affidavi in many cases, are completely irrelevant to the specific issue of injunctive relief which was before this Court. Likewise, the proposed "Conclusions of Law" totally disrega the record before the Court in this case. To conclude that Vesco & Co., Inc. is the mere alter ego of Robert L. Vesco,

for example, should require more than a bald, unsubstantiated assertion in Mr. Butowsky's affidavit. Yet the plaintiff has apparently succeeded in these "findings" and "conclusions" in having such undocumented charges accepted in toto by this Court.

By incorporating "Plaintiff's Proposed Findings of Fact and Conclusions of Law" into your orders of July 3, Your Honor has abandoned the record in this case and has purported to summarily dispose of many substantive issues without any evidentiary hearing and without even any argument thereon. I respectfully contend that such action represents a most unusual departure from all concepts of due process of law.

Needless to say, the above-mentioned objections to the procedural posture which this case has assumed are in addition to my basic substantive disagreements with Your Honor's decisions of July 3. I do not feel that it is necessary to repeat the numerous legal arguments previously presented to Your Honor. It would appear, however, that by signing the plaintiff's papers, such arguments have been either disregarded or rejected out of hand. In either event, I can only recommend to Your Honor our papers previously filed in this case for Vesco & Co., Inc.'s position regarding the granting of injunctive relief under the circumstances of this case, and

on the jurisdictional and F.R.C.P. 12(b)(6) grounds.

Respectfully yours,

HANNOCH, WEISMAN, STERN & BESSER

By _____
LAURENCE B. ORLOFF

LBO:mcc
cc: Shea, Gould, Climenko & Kramer

HAND DELIVERED

Transcript of proceedings before Judge Charles E. Stewart on July 9, 1973.

(547a - 563a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

vs. : 72 Civ. 2518

ROBERT L. VESCO, et al., :

Defendants. :

----------x

New York, New York
July 9, 1973 - 3:30 p.m.

BEFORE:

HON. CHARLES E. STEWART, JR.,

District Judge.

APPEARANCES:

Messrs. SHEA, GOULD, CLIMENKO & KRAMER,
General Counsel for Plaintiff,
By: SHELDON D. CAMNY, Esq.,
DANIEL L. CARROLL, Esq.,
LOIS SYLOR YOHONN, Esq.,
of Counsel.

Messrs. BUTOWSKY, SCHWENKE & DEVINE,
Special Counsel for Plaintiff,
By: DAVID M. BUTOWSKY, Esq.,
of Counsel.

Messrs. GOTTLIEB, SCHIFF, FABRICANT & STERNKLAR,
Attorneys for Alwyn Eisenhauer,
By: HOWARD SINGER, Esq.,
of Counsel.

THE COURT: I have your letter, Mr. Orloff, in which you indicate you are shocked and you consider that there have been gross violations of procedural due process. I assume that a lawyer doesn't say this idly. If there had been gross violations of procedural due process, I am anxious to cure that. I hadn't thought there had been, but perhaps I am wrong. Why don't you tell me about it?

MR. ORLOFF: I hoped that I had told your Honor some of it in the letter.

THE COURT: You have told me quite a bit in your letter.

MR. ORLOFF: I don't say it idly and I say it most respectfully. It did come as quite a shock to me on Thursday morning to learn, and thereafter to obtain copies of, by sending over to someone over in the Clerk's office here, not only orders that were entered, which I had not seen prior to that time, but --

THE COURT: This, incidentally, was probably my -- at least I was unaware of the fact that you had not seen those orders.

Go ahead.

MR. ORLOFF: We obtained copies of the orders and there was filed plaintiff's proposed findings. The orders that we obtained from the Clerk's file, last Thursday

morning, made reference to an opinion of the Court dated blank, and the blank remained in the orders. We have copies of those. It was very unclear to me --

THE COURT: Has that opinion ever been given a date?

MR. ORLOFF: The order was signed by your Honor and dated. It had apparently been presented by Shea, Gould, I assume, the previous Monday or Tuesday, with a blank for your Honor's opinion. It was apparently filed without any date for opinion and --

THE COURT: Is it still blank?

MR. ORLOFF: Let me put it this way: I can only tell your Honor what I am aware of at this point.

On Friday of last week, we received in the mail from Shea, Gould, copies of the two orders and the plaintiff's proposed findings, and in those copies which are also stamped filed with this Court on the same day, the typed reference to an opinion was crossed out and there was handwritten in, I assume by your Honor, a reference to the plaintiff's proposed findings and conclusions which, if I read it correctly, your Honor purported to adopt. So, there are on file, as far as I know, two sets of each of the two orders that your Honor signed, both of them basically being the orders presented by Shea, Gould, and

I assume the second set, because that wasn't on file Thursday morning but wound up being sent to us last Friday, the second set having some pencil interlineations which I gather purport to adopt verbatim the plaintiff's proposed findings and conclusions and as the Court's findings and conclusions.

THE COURT: What specifically would you like me to do?

MR. ORLOFF: Specifically what I would like your Honor to do in the first instance is to reconsider and vacate those findings and conclusions as your own.

THE COURT: As against Vesco & Co., Inc.?

MR. ORLOFF: Yes, I am only speaking for Vesco & Co.

THE COURT: Let me interrupt you for a moment, Mr. Orloff.

We didn't have an evidentiary hearing, as you well know. I concluded, on the basis of material which is before me, material which you didn't have an opportunity to deal with, at least not fully, that Vesco & Co., Inc., was at least for purposes of temporary relief a creature of Robert Vesco.

Now, if you want an opportunity to present evidence on that question, I think I would be inclined to give you

the opportunity to do so. My inclination I will not state. I will give you the opportunity to do so.

MR. ORLOFF: I must say, while I appreciate the invitation, I certainly want to consider it, but I am more troubled than ever, quite frankly, by your Honor's comment this was arrived at, if I understood your Honor correctly, material not available to us.

THE COURT: I didn't mean to say available to you. I think everything I had available was available to you. I think what I am talking about is the opportunity to cross-examine witnesses. I think everything I saw must have been available to you.

MR. ORLOFF: If your Honor is referring to the materials --

THE COURT: The only thing I know of that you didn't have was the opportunity to cross-examine witnesses. I believe, as far as I know, all of the materials I saw were a matter of public record.

MR. ORLOFF: The public record is very large, your Honor, and I only focus on this case, your Honor.

THE COURT: I understand the public record is pretty large.

MR. ORLOFF: The record in this case, as far as I am concerned, consists of the specific affidavits that

were filed in this case and if your HOnor is referring to those --

THE COURT: I am.

MR. ORLOFF: -- I don't recall making any reference to Vesco & Co., other than the affidavit we filed in giving some history, which --

THE COURT: I recall a number of things that happened on the record in the Vesco matter before we got to your problem and which I brought up when we got to your problem, such as who were the officers, who was Mr. Bailey, and there was background which I can't ignore which I know about because of other Vesco cases and which I think I am entitled to take into account.

However, I am telling you now, if you want an evidentiary hearing, I will give it to you, if you think it will be useful. I based my ruling on my conclusion. I thought Vesco & Co., Inc., at least for purposes of temporary relief, was presumptively closely enough associated with Robert Vesco, and I believed ought to be dealt with in that respect. I have told you the way I feel about it and I have told you the basis on which I made my ruling.

MR. ORLOFF: If your Honor is ruling solely on the basis of the affidavits, there is nothing I can say.

THE COURT: Do you want a hearing?

MR. ORLOFF: I want a hearing if it will assist the Court in some way. I don't know what to come forward with at a hearing. It seems to me the burden is on the plaintiff. The plaintiff has said on information and belief, and this is essentially what they have said: Vesco & Co. was an alter ego of Mr. Vesco, et cetera. We have given your Honor factual material. It seems to me the burden ought to be on the plaintiff to come forward. The question whether there should be a hearing ought to be checked to the plaintiff.

THE COURT: I think your position is correct as to the situation before I ruled. Now I ruled; and there may be a shift in the burden. I am not going to stick with the technical question where the burden is.

MR. CAMNY: I only wish to point out, which I suspect your Honor already knows and as reflected in the findings, and this is based on a record created largely by Mr. Orloff, Vesco & Co. has the same name as Mr. Vesco, it was created by his attorney, its officers are his wife and secretary, stock is owned by his wife and his children and himself. It holds property to which he transferred his own property; that is to say, what he transferred to it promptly without new considoration. We have, therefore

every classical element of a creature, or sometimes called an alter ego, which occurs all the time in bankruptcy situations, tax situations, creditors' rights situations. These are the prima facie elements of an alter ego and corporate creature, your Honor, and on this kind of record I believe the findings were justified.

Obviously, any preliminary injunction is subject to a different result after trial or hearing and if Mrs. Vesco or Mrs. Bailey or the children want to come in here and dispel the classic prima facie indicia of a corporate creature we will have a hearing here to test the honesty of that contest. Until then, I can't see how any fault can be found with the Court's finding.

THE COURT: Of course, as you say, I was acting on the basis of prior information, which can often lead -- not often, but occasionally, at least, or may lead to an incorrect result, and I may have been wrong. That is why I am suggesting to Mr. Orloff if he wants to persuade me or try to persuade me I was wrong I would like to hear from him.

MR. CAMNY: Your Honor, your findings of fact, at least the ones we submitted and which were signed, arrogate no function other than a preliminary one. They state that from papers submitted in support of Vesco &

Co.'s motion to dismiss, it appears, and that is all they say, your Honor. They do not constitute any attempt to bind it hereafter or make any plenary determination after hearing. They constitute a notation of what appears on a record from papers submitted largely, I submit, on behalf of defendants.

THE COURT: Mr. Orloff, as a practical matter, what are we dealing with? What does my order do to you?

MR. ORLOFF: Your order does several things, your Honor.

THE COURT: If there is some help you need that I can give you appropriately, I would like to try to do it. I am not disposed to change my order, but if I can amend it or revise it or make some adjustments, I will be delighted to do so, if there is a good reason for me to do so.

MR. ORLOFF: Inasmuch as we have challenged and intent to pursue the challenge to your overall jurisdiction, I will point out to your Honor, you have purported to make certain findings, indeed to adopt verbatim the findings of the plaintiff and I should point out to your Honor the specific method of adopting one party's findings was frowned upon by our United States Supreme Court in United States vs. El Paso Gas Co., 376 U.S. 51.

THE COURT: Mr. Orloff, I would be delighted if you would send me suggestions as to how I ought to amend my findings.

MR. ORLOFF: I would be glad to do that. It might be more appropriate in writing. The other thing that does perplex me, your Honor, it perplexed me when I saw it on the order to show cause and perplexes me even more when I see the order. Your Honor signed two orders against Vesco & Co., one captioned Securities and Exchange Commission vs. Vesco, et al., 72 Civil 5001, and that is the case, I understand, where your Honor held a lengthy trial earlier this year. Vesco & Co. is not a party to this case. They were never made or never purportedly made a party. Your Honor's order recites various procedural steps against defendant Vesco & Co., Inc., and purports to restrain defendant Vesco & Co., Inc. As far as I know, Vesco & Co., Inc., is simply not a defendant in that case under any stretch of the imagination and even if your Honor were to find, which of course I contest, that somehow it was an alter ego of Mr. Vesco, I don't think it is proper or appropriate for you to specifically by name enjoin a corporate entity in a case in which that corporate entity was never a party, and I must say, I've been trying to determine in my own mind what the plaintiff's purpose was in

putting that caption on. I've been unable t[illegible] and I was most surprised to see your Honor sign an order with that caption.

MR. CAMNY: Your Honor, may I be heard on that?

THE COURT: Yes.

MR. CAMNY: Your Honor, that order was entered in both actions for the following reasons:

Robert Vesco was personally a party in the SEC action, he was served. The order goes to the question of this action in New Jersey which makes this frontal assault in the judgment of the SEC action, and it has been our position on the prior argument and today, your Honor, that Mr. Vesco having been a party to that action, and this Court having acquired personal jurisdiction over that action, and he having an opportunity in that action to contest either on its original issuance or immediately following its original issuance that order, by moving to vacate it in that action, that the least that could be said was that he should not be going into the courts of New Jersey either as Robert Vesco or as Vesco & Co. seeking to set aside the Court's judgment in an action to which he was a party. If Robert Vesco had gone into the courts of New Jersey, we would have used the same caption to go after Robert Vesco. Instead, he has caused what

we consider to be his creature to do his bidding for him. In any injunction action, if there is a tree that has to be cut or a river rechannaled and there is a contract, some agent of a party cut there with the machines, the derricks or the saw, whatever it is, when a judgment comes down, especially in a preliminary injunction when something has to be stopped immediately with the caption of that action, the injunction which is served on a non-party, but is subject to the bidding of a party, it says, "Stop until we hold a trial. Don't cut the tree or rechannel the river." Vasco is the creature, agent, and doing the bidding of Robert Vasco when it charges to the courts of New Jersey. Robert Vasco was a party of an action in which a judgment was entered. The theory was, he could have moved in that action to set aside the judgment if he didn't like it, or could have opposed it when issued. He should not be permitted to charge into the courts in New Jersey and his agents should not be doing so, and an order may be served upon them in much the way as served on the contractor.

THE COURT: It seems to me, Mr. Orloff, if I entered a judgment or an order, as to, as you say, somebody over whom no jurisdiction or as to whom I shouldn't enter an order, there are at least two ways in

which you can appropriately -- three ways in which you can appropriately deal with that. You can ignore the order, go ahead and do whatever you want. Then, you can come in and ask me whether you think what you are about to do violates the order. And the third way is refinement of the second way; you can talk it over with the other people involved, the other parties. I don't intend for one moment to try to enforce an order which I don't really have power to enter. I think I have power to enter this order but, if I am wrong, I would like you to tell me why.

MR. ORLOFF: I'll be glad to, your Honor.

THE COURT: You know you can come to me and explain to me why.

The question you dealt with at length, the questions you have dealt with at length in your letter of July 9th, it seems to me you have to tell me you want an evidentiary hearing. If you do, I'll give it to you.

MR. ORLOFF: I'm not prepared to say that today, although I do want to think about that, your Honor.

THE COURT: If you have something else you want me to do, I'll expect you to tell me.

MR. ORLOFF: I certainly will.

THE COURT: I understand from your letter that you are unhappy, and that you feel you haven't been fairly dealt with. As I said, when we started, I am distressed when a lawyer tells me he doesn't feel he has been fairly dealt with.

MR. ORLOFF: I hope your Honor can understand some of the basis of my letter, in view of what happened last week, and how we came to learn about the disposition of this matter. We anticipated your Honor would rule on Monday, based upon material submitted to you by Friday. I'm not troubled by the fact that material was given to you on Monday instead of on Friday, but I am most troubled by the fact that it was given to you in the usual expedited fashion and unlike other papers that have been served back and forth in this matter, it was sent out by mail and, of course, as a result of the intervening holiday we didn't get it until Thursday.

THE COURT: In view of all of the circumstances, Mr. Orloff, I want to make it perfectly clear, if you feel you have been aggrieved and you haven't been fully heard, you can put before me in writing whatever you want to put before me in writing, or you can ask me for an evidentiary hearing and I will give you one.

MR. ORLOFF: I appreciate that and I will write

to your Honor immediately tomorrow.

MR. CAMNY: May I interrupt for just a minute?

THE COURT: Let me hear from Mr. Orloff first.

MR. ORLOFF: I don't think Mr. Camny has entered a point about this order. If in fact, which I don't concede in any way, shape or form, Mr. Vesco and Vesco & Co. are the same, then it should be against Vesco and not against Vesco & Co. which is not a party in that case. Your Honor has given us some alternatives. That, of course, is to go to the Court of Appeals. Are we now to file a notice of appeal in a case we were never a party to?

THE COURT: I don't know how you can do that.

MR. ORLOFF: I don't think we can do it, and that's another way of illustrating the entry of an order against us, in this action, is improper. If Mr. Vesco is our agent, or if we are his agent, presumably the usual language of the injunction against him will bind us.

MR. CAMNY: Your Honor, I wouldn't want any conclusion other than the following: The only papers served that you had not seen were proposed findings of fact and conclusions of law.

MR. ORLOFF: In the orders.

THE COURT: I understand fully that both of you

are very busy, you are both trying to be courteous.

MR. CAMNY: I wouldn't want the record to indicate there was any evidence of any kind submitted which they didn't have an opportunity to see. The other point I would like to make, your Honor, if Vasco & Co. feels aggrieved by an order made in the SEC action, it can, like any agent, come into the action and say that they are hurt and then there can be a contrary ruling and it can go on appeal.

MR. TERRELL: Your Honor, I have a much more and immediate practical difficulty with the order. I represent Fairfield General, a viable operating company over in New Jersey. Your order, given its fair reading, means we can't do anything with the assets of our company. I have spoken to Mr. Camny's order and sent to him an order which allows us to carry on our normal day-to-day business. I have also included in that order, your Honor, provision -- as you know, we are trying to sell this --

THE COURT: Have you worked something out?

MR. CAMNY: As soon as we adjourn here today, your Honor.

THE COURT: This is something, Mr. Camny, you ought to deal with. They have a practical problem. I think you ought to cooperate fully.